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Sup. Ct.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 349

E. A. KELLEAM, NELL SOUTHARD, JOE E. KELLEAM AND JOE R. SOUTHARD, JR., PETITIONERS,

vs.

MARYLAND CASUALTY COMPANY OF BALTIMORE, MARYLAND, MRS. ETHEL RIDDLER, MRS. DOROTHY PAYNE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 20, 1940.

CERTIORARI GRANTED OCTOBER 14, 1940.

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[fol. A] [Caption omitted]

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 2059

E. A. KELLEAM, NELL SOUTHARD, JOE E. KELLEAM and J. R. SOUTHARD, JR., Appellants,

vs.

MARYLAND CASUALTY COMPANY OF BALTIMORE, MD., a corp., Mrs. Ethel Riddler, Mrs. Dorothy Payne, J. K. Perkins, Mrs. F. Bates, Glen Perkins, Bessie Mathews, Mrs. Elouise Kulp, Leggette Hall, Lamar Hall, Marguerite Bradley Kelleam, Mary Kate Hall, Kelleam Hall, Clifford Kelleam, Kathleen Kelleam, Dr. Fannin Kelleam, Francis Kelleam, Mrs. Jimmie Kelleam, and Robert Kelleam, Appellees

APPELLANTS STATEMENT OF POINTS UPON WHICH THEY INTEND TO RELY ON APPEAL—Filed January 27, 1940

Appellants E. A. Kelleam, Nell Southard, Joe E. Kelleam and J. R. Southard, Jr., comformable to Rule 13 of this Honorable Court, for their statement of points upon which they intend to rely on appeal, respectfully state:

1. That the U. S. District Court for the Northern District erred in overruling and denying pleas of the appellants to venue and to the jurisdiction of the court.

2. That said court erred in overruling and denying appellants' demurrer and motion to dismiss at the conclusion of the evidence for that the evidence fails to establish:

First: Venue and jurisdiction in the court.

Second: Fraud.

Third: Facts warranting vacation of the decree of the County Court of Creek County, establishing heirship, which was res judicata.

[fol. 2] 3. That said court erred in refusing to make findings of fact and conclusions of law as requested by appellants at the trial.

4. That the court erred in making findings of fact and conclusions of law as requested by appellees in that the same are contrary to the law and contrary to the evidence.

5. That the court erred in entering its decree for appellees and refusing to enter decree for appellants to dismiss, and for costs and in refusing to grant a new trial and rehearing.

Glenn O. Young, Attorney for Appellants.

ACKNOWLEDGEMENT OF SERVICE

Service of a copy of the foregoing is acknowledged this the 11 day of January, 1940.

W. E. Green, J. C. Farmer, Attorneys for Maryland Casualty Co. of Baltimore, Md., a corp. appellee.
Heber Finch, Attorney for cross-petitioners Mrs. Ethel Riddler, et al., appellees.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

STIPULATION DESIGNATING RECORD FOR PRINTING ON APPEAL—Filed January 27, 1940

Come now appellants and appellees herein and by their respective counsel of record stipulate and agree and jointly designate for printing, comformable to the rules of this court, the following:

1. Bill of Complaint, filed June 8, 1938.

2. Separate Answer and Cross-Petition of Mrs. Ethel Riddler, et al., filed June 18, 1938, with exhibits.

3. Motion of Plaintiff for Order of Service on Defendant E. A. Kelleam, and Joe E. Kelleam Outside of District and Order for Service Outside of District, and return of service thereon, filed Aug. 27, 1938.

4. Special Appearance and Plea to the Jurisdiction of E. A. Kelleam, and Special Appearance and Motion to Dis-
[fol. 3] miss of Joe E. Kelleam, J. R. Southard, Jr., and Nell Southard, filed Sept. 3, 1938.

5. Amendment to Bill of Complaint, filed Oct. 24, 1938.

6. Amendment to Answer and Plea in Abatement, filed Jan. 21, 1939.

7. Journal Entry overruling Special Appearance and Motion to Dismiss of Joe E. Kelleam, J. R. Southard, Jr. and Nell Southard, and Special Appearance and Plea to the Jurisdiction of E. A. Kelleam, filed Jan. 23, 1939.

8. Motion of E. A. Kelleam, Nell Southard, J. R. Southard, Jr. and Joe Kelleam to Strike Cross-Petition, filed Jan. 25, 1939.

9. Separate Answer of defendant E. A. Kelleam to Bill of Complaint and Amendment thereto, filed Jan. 25, 1939.

10. Separate Answer of the Defendant J. R. Southard, Jr., filed Jan. 25, 1939.

11. Separate Answer of the Defendant Nell Southard, filed Jan. 25, 1939.

12. Separate Answer of the Defendant Joe E. Kelleam, filed Jan. 25, 1939.

13. Inventory of Receiver, filed May 4, 1939.

14. Separate Answer of defendants E. A. Kelleam, Mrs. Nell Southard, J. R. Southard, Jr. and Joe E. Kelleam to Cross-Petition, filed June 7, 1939.

15. Journal Entry Overruling Motion to Strike Cross-Petition, filed June 12, 1939.

16. Defendants' Request for Special Findings of Fact and Conclusions of law, filed June 21, 1939.

17. Findings of Fact and Conclusions of Law, filed Sept. 26, 1939.

18. Decree, filed Sept. 26, 1939.

19. Notice of Appeal, filed Nov. 25, 1939.

20. Recitation that appellants filed Appeal Bond Nov. 29, 1939.

21. Order Extending Time to Docket Appeal, filed Dec. 27, 1939.

[fol. 4] 22. Summary of the Record, Evidence and Proceedings at the Trial, prepared and filed by appellants Dec. 28, 1939, to which add

A. Petition for Approval of Final Account, filed in the County Court of Creek County in cause No. 4354, and introduced in evidence.

B. Amended and Supplement Final Account in said cause No. 4354.

C. Demurrer filed in cause No. 4354.

23. Appellants' Statement of Points:

A. Filed in the U. S. District Court.

B. Filed in the U. S. Circuit Court of Appeals.

24. Appellants' Designation of Record on Appeal and amendment thereto.

25. Appellees' Designation of Record on Appeal and amendment thereto.

26. This Designation and Stipulation.

27. Clerk's Certificate.

It is further stipulated and agreed that this joint stipulation may be taken and accepted in lieu of any designation heretofore presented and filed by either party.

Glenn O. Young, Attorney for Appellants. W. E. Green, J. C. Farmer, Robert J. Woolsey, Heber Finch and R. A. Young, Attorneys for Appellees.

[File endorsement omitted.]

[fol. 5] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 1290—Equity

MARYLAND CASUALTY COMPANY OF BALTIMORE, MARYLAND, a Corp., Plaintiff,

vs.

E. A. KELLEAM, NELL SOUTHARD, J. R. SOUTHARD, JR., JOE E. KELLEAM, J. K. Perkins, Mrs. Fannie Bates, Mrs. Bessie Bates, Mrs. Elloise Bates, Glen Perkins, Mrs. Ethel Riddler, Mrs. Dorothy Payne, Clifford Kelleam, Mrs. Kathlyn Kelleam, Daughter of W. S. Kelleam, Dec.

(whose name is not known), Leggette Hall, Marguerite Bradley, Lamar Hall, Mary Kate Hall, a daughter of Mrs. Kate Hall, Dec. (whose married name is unknown), Kelleam Hall, Mrs. Clyde Bates, Dr. Fannin Kelleam, Francis Kelleam, Mrs. Jimmie Kelleam, daughter of Dr. R. T. Kelleam, Dec., (now married and name unknown) and Robert Kelleam, Defendants

---

BILL OF COMPLAINT—Filed June 8, 1938

Now comes the plaintiff, and for its cause of action and complaint against the defendants and each of them, says:

I

That the plaintiff herein is a corporation, duly organized and existing under and by virtue of the laws of the State of Maryand, with its principal place of business at Baltimore, and duly domesticated and authorized to do business under and by virtue of the laws of the State of Oklahoma, and that among the authorized powers and rights of said corporation is that of becoming surety on bonds.

[fol. 6] That E. A. Kelleam is, as this petitioner is informed and believes at the present time a resident of Sells, Arizona. That Nell Southard and J. R. Southard, Jr., are residents of the State of Oklahoma. That Joe Kelleam is a resident of the State of Arizona. That all of the other defendants are residents and citizens of the State of Arkansas and the State of Oklahoma, the exact addresses of each this plaintiff does not know and cannot give, but is informed and believes that a part of said defendants lives in the State of Oklahoma, and within the Northern District of Oklahoma, and may be served with process out of this court.

II

That in the early part of 1936 Leggette D. Kelleam then a resident and citizen of Creek County, Oklahoma, died. And, shortly thereafter, the defendant A. E. Kelleam was by the County Court of Creek County, Oklahoma, duly appointed as Administrator of his estate, and as a condition precedent to his qualification, as such administrator, was required to give an administrator's bond in the sum of Ten Thousand ($10,000.00) Dollars. And that this plaintiff became surety

on said bond, and said bond was duly filed in the Probate case of Creek County, Oklahoma, approved and the said A. E. Kelleam took the oath of office and fully qualified and took charge of all the assets and property of the deceased, Leggette D. Kelleam, consisting of both real and personal property—the exact description and nature of which this plaintiff does not know, but that it consisted of personal and real property appraised and valued at approximately Thirty Thousand ($30,000.00) Dollars; But that among the items of property which said Administrator took charge of was,

1. Lot 18 Block 5 Broadway Addition to Drumright, Creek County, Oklahoma

2. Lot 11 Block 1 Drumright Addition to Drumright, Creek County, Oklahoma

3. Lot 7 Block 2 Belle Vern Addition to Oklahoma City, Oklahoma County, Oklahoma

4. Lot 8 Block 2 Belle Vern Addition to Oklahoma City, Oklahoma County, Oklahoma

5. Lots 29 and 30 Block 7, College Hill Addition to Oklahoma City, Oklahoma County, Oklahoma.

[fol. 7] 6. 7/16ths interest Sam Vance lease, SE¼ SW¼ Sec. 6, Twp 18 N, Range 7 E, Creek County, Oklahoma.

7. 1/32nd overriding royalty interest Sam Vance lease, SW¼ SW¼ Sec. 6-18-7E, Creek County, Okla.,

8. 1 note signed by Nell Southard, Blanchard, Okla., for $700.00.

9. 1 note signed by J. R. and Nell Southard for $4000.00.

10. 1 note signed by J. R. and Nell Southard for $1000.00.

11. 1 note signed by J. R. and Nell Southard for $700.00.

12. Cash in bank approximately $3500.00.

That the value of the property above set forth is far in excess of $3000.00 and the controversy herein involves more than $3000.00, and is far in excess of the jurisdictional amount qualifying this Court with jurisdiction. That there is a diversity of citizenship—that this action is between residents and citizens of separate and different states, and

that some of the defendants in this action are residents of Oklahoma, and as this plaintiff is informed and believes, are within the Northern District of Oklahoma and may be served with process out of this Honorable Court. That a part of the property is located within the Northern District and that this Honorable Court has jurisdiction of the subject matter and of the parties to this action.

III

That after A. E. Kelleam was appointed and qualified as Administrator of the estate of Leggette D. Kelleam, upon his petition and that of the defendant Nell Southard, he took charge of the property of the deceased, administered it and then sometime in August or September 1937, the exact date of which this plaintiff does not have at this time, but same is shown by the records of the County Court of Creek County, Okla., the said A. E. Kelleam filed his denominated final account and amended final account, and same was heard by the County Court of Creek County, Oklahoma, and the County Court of Creek County, Oklahoma, made an Order approving the final account and determining heirship and decreeing distribution of the property remaining in the hands of the Administrator. That a decree entered by the County Court gave all of this remaining property and decreed that it pass to A. E. Kelleam and Mrs. Nell Southard.

[fol. 8] That thereafter, and within a few weeks of the rendition of this decree and order by the County Court, certain claimed heirs, to-wit: Mrs. Ethel Riddler, Dorothy Payne and others filed their application in the County Court of Creek County, to set aside and vacate the Order and decree of the County Court decreeing that A. E. Kelleam and Mrs. Nell Southard were the sole and only heirs of the deceased Leggette D. Kelleam and to declare and decree them to be heirs and to receive their distributive share of their estate, alleging in their application for vacating this decree that same had been procured by fraud perpetrated on the County Court by A. E. Kelleam and Mrs. Nell Southard. Said additional heirs alleging that they were children of half brothers and sisters of the deceased, and that A. E. Kelleam and Mrs. Nell Southard were full brothers and sisters of the deceased, and that they all inherited equally and alike, the estate of Leggette D. Kelleam being a general estate and not an ancestral estate. That

this application and petition on the part of these moving heirs is still pending in the County Court of Creek County, Oklahoma, and that all of the other heirs have now intervened therein, and this plaintiff alleges upon information and belief that the defendants hereinabove named are all of the heirs and claimed heirs of the deceased, Leggette D. Kelleam.

IV

That after the decree of the County Court, which is now sought to be vacated, was rendered and within a short time thereafter, the defendant A. E. Kelleam undertook to and did make a conveyance to his son Joe Kelleam and that the defendant Mrs. Nell Southard attempted to and did make a conveyance of the real property which she had purportedly received in this decree of distribution, to her son J. R. Southard, Jr., and that these conveyances were not made until after the alleged heirs had moved to vacate the final decree and order of distribution, and this plaintiff believes and alleges the fact to be that the conveyances were made without consideration and with full knowledge of the claimants of the other defendants in this action, and that they are void.

V

This plaintiff further alleges that it is informed and believes and asserts it as a fact that A. E. Kelleam and Mrs. Nell Southard, if the property involved herein and property received by them under said decree is not preserved [fol. 9] and held intact, cannot be made to respond or satisfy a judgment rendered against them or either of them for the distributive share of these claimed heirs in the estate of their deceased brother, and that unless this property involved in this action is impounded and held intact to await the final outcome of the litigation between these defendants and to respond to satisfy a judgment or any judgment that might be rendered in favor of the contesting heirs as against A. E. Kelleam and Mrs. Nell Southard, that then and in that event said property will be dissipated and will not be available to satisfy such judgment or order, and will not be available to be distributed to the claimed heirs, if it should be adjudged they were heirs and that the said A. E. Kelleam and Mrs. Nell Southard are not and will not be financially able to respond and pay or satisfy any judgment or order made against them in favor of their half

brothers and sisters or the children of their half brothers and sisters and them and in that event said claimed heirs will fall back on and require the plaintiff herein to pay, as surety on the bond of A. E. Kelleam, the distribute shares that may be awarded to the contesting heirs herein. And that this plaintiff is entitled to have the property in the hands of A. E. Kelleam and/or Mrs. Nell Southard impounded and held intact and preserved to await and abide the final order or judgment that may be rendered in the controversy between A. E. Kelleam and Mrs. Nell Southard upon the one hand and the other defendants in this action upon the other hand.

This plaintiff further says that a part of this property is rental property and that the rents, issues and profits from said property, in addition to the corpus of said property should be saved and preserved, and that a part of the property involved herein is oil property that should be conserved and preserved and that it is necessary to operate said property and pay for the operation of said property and at the present time, under this controversy nobody is paying for the operation of said property and same is being neglected and should be conserved and protected by being properly operated.

That this plaintiff is without and has no adequate remedy at law, and that there will be an irreparable injury done to this plaintiff unless the property involved in this action is impounded, conserved, preserved and held to await the outcome of the controversies between the defendant in this [fol. 10] action so as to protect and exonerate this surety on the bond of A. E. Kelleam by having the property present to await final judgment, and to be present for the distribution in whatever manner it is finally held said property should be distributed, and to hold this plaintiff harmless as against any claim under its bond by reason of the failure of said property to be present for satisfaction of final judgment or order which may be rendered in this cause.

That the property involved in this action be impressed with an equitable lien by this Honorable Court to satisfy and discharge final judgment rendered between the litigation defendants herein, and said lien to be decreed against said property to satisfy the claim of any of the defendants herein.

Wherefore, this plaintiff prays that a Receiver be appointed in this action to take charge of the property belonging to said estate and to conserve and preserve same to await the final action and outcome of the controversy and litigation between A. E. Kelleam and Mrs. Nell Southard upon the one hand and the other contesting heirs, being the other defendants in this action upon the other hand, and to impress a lien upon said property to satisfy any claim of the adverse defendants in this action to A. E. Kelleam and Mrs. Nell Southard; and, to impound and hold this property in the hands of the Receiver appointed at the instance and under the direction of this Honorable Court, and to hold and keep said property, and to collect the rents, issues and profits therefrom, until the further order of this Court and until the controversy be finally settled between the defendants herein, and to continue said property impressed with a lien to satisfy final judgment that may be rendered between the defendants herein; and then and in that event such Receiver be directed to deliver and turn said property over to whoever it is finally determined should receive the property and to exonerate and hold this plaintiff harmless and free from any liability in and by virtue of its suretyship on the administrator's bond of A. E. Kelleam, and to issue a citation to each of the parties herein, requiring them to come in and set up whatever claims they have to the property involved herein, and to bind all of said defendants by the decree and order of this Honorable Court, appointing a Receiver, impounding said property and exonerating this plaintiff, and for such other and further orders and decrees [fol. 11] as this Honorable Court may in equity and good conscience deem this plaintiff entitled.

(Signed) Green & Farmer, Attorneys for Plaintiff.

(Jurat omitted per stipulation.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SEPARATE ANSWER AND CROSS PETITION OF MRS. ETHEL RIDDLER, MRS. DOROTHY PAYNE AND OTHERS SIMILARLY SITUATED—Filed June 18, 1938

Now come the defendants, Mrs. Ethel Riddler, Mrs. Dorothy Payne, J. K. Perkins, Mrs. F. Bates, Glen Perkins,

Bessie Mathews, Mrs. Elouise Kulp, Leggette Hall, Lamar Hall, Marguertte Bradley Kelleam, Mary Kate Hall, Kelleam Hall, Clifford Kelleam, Kathleen Kelleam, Dr. Fannin Kelleam, Francis Kelleam, Mrs. Jimmie Kelleam, and Robert Kelleam, and for their answer or response to the bill of complaint of the plaintiff herein filed, say:

I. These answering defendants admit the allegations in Paragraph No. 1 of the plaintiff's bill of complaint, except that same should be corrected in the following particulars: J. K. Perkins resides in Milwaukee, Wisconsin; Mrs. Fannie [fol. 12] Bates, the daughter of Mary Perkins, resides in Yorba Linda, California; Mrs. Bessie Mathews resides in Santa Anna, California; Mrs. Elouise Kulp resides in Long Beach, California; Glen Perkins resides in Yorba Linda, California; Mrs. Ethel Riddler and Mrs. Dorothy Payne reside in Fort Smith, Arkansas; Clifford Kelleam's address is not known to the pleader at this time; Kathleen Kelleam resides in Los Angeles, California, at 7501 S. Central Avenue; Leggette Hall resides at Little Rock, Arkansas; Lamar Hall resides at Waldrum, Arkansas; Marguerite Bradley Kelleam resides at Long Beach, California; Dr. Fannin Kelleam resides at Amarillo, Texas; Francis Kelleam resides at Oklahoma City, Oklahoma; Mrs. Jimmie Kelleam resides at Oklahoma City, Oklahoma, and Robert Kelleam resides in the State of Texas, the exact address of which the pleased does not have at this time.

II. These answering defendants further admit the allegations set forth in plaintiff's bill of complaint in Paragraph No. II, further alleging that there was much personal property belonging to the deceased, Leggette D. Kelleam, which is not listed therein and as more particularly shown and itemized by an inventory and appraisement filed in the probate cause in the County Court of Creek County, Oklahoma, and that all of said personal property was located in Creek County, State of Oklahoma, and there taken possession of by the defendant E. A. Kelleam and the defendant, Francis Kelleam admits that she was within the Northern District of Oklahoma and there served with process in this cause personally.

III. These answering defendants further admit the allegations set forth in plaintiff's bill of complaint in Paragraph No. III, with the explanation that they do not admit

the validity of the orders made by the County Court of Creek County, Oklahoma, but do admit that the County Court of Creek County, Oklahoma, entered the purported orders pleaded in this paragraph and that said orders were procured from the County Court by the defendants, E. A. Kelleam and Nell Southard, by and through fraudulent representations to the County Court of Creek County, Oklahoma, and that the orders purported to have been made are void upon their face, in addition to having been fraudulently procured, a copy of which order will be attached to this pleading and made a part of the cross petition herein.

IV. These answering defendants further say, as to Para- [fol. 13] graph No. IV, of plaintiff's bill of complaint, that they now have been informed that there was an attempted conveyance by E. A. Kelleam to his son, Joe Kelleam and by the defendant Nell Southard to her son J. R. Southard, Jr., but as to this being a fact, these answering defendants are not fully advised, but if such a conveyance was attempted, and was, in truth and fact made, it was and is a void conveyance, and should be cancelled, set aside and held for naught, for that it was taken with full knowledge of the claims, rights, equity, interest and title of these answering defendants in and to said property, and that whatever interest was conveyed, if any, is inferior to and subject to the equities, interest, right and title of these answering defendants, and that whatever cloud such conveyance may cast upon said property as against these answering defendants, should by this Honorable Court be vacated, cleared and set aside.

V. As to Paragraph No. V of plaintiff's bill of complaint, these answering defendants are informed, and upon information and belief, represent to this Honorable Court that unless the property involved in this action is impounded preserved and held and impressed with a lien, it will be dissipated, if not destroyed, and that the rents, issues and profits thereof will be lost, and that the oil property will be greatly depreciated, if not lost, and that E. A. Kelleam and Nell Southard, outside of this property, are not financially able to respond to and satisfy the claims of these answering defendants and that in addition thereto, by reason of the apparent record, it may be possible to place this property beyond the reach of these defendants and permit the intervention of innocent purchasers or encumbrancers without

the knowledge of the interest, title, equity and claim of these answering defendants unless, these answering defendants say, this Honorable Court in its equity powers decrees for the purpose of the record and to advise the world of the interest, equity, right and title of these answering defendants in and to said property of their claim, equity and lien, so as to prevent the intervening rights of any encumbrancer or purchaser from transgressing the rights of these answering defendants.

And these answering defendants further admit that the plaintiff herein has no adequate remedy at law and is entitled to the equity relief sought in this bill of complaint and is entitled to the appointment of a Receiver to take charge of said property and impound it, keep it, preserve and collect [fol. 14] the rents, issues and profits therefrom, as prayed for in the bill of complaint.

Wherefore, having fully answered, these defendants pray that this Honorable Court take jurisdiction of this matter and to impress the lien in favor of these defendants on the property involved in this action and to appoint a Receiver to hold, protect, conserve and keep said property, so that it may be distributed in the respective shares they are entitled to these answering defendants, as set forth in their cross petition which follows hereafter.

Heber Finch, Fred S. Armstrong and Pliney Fry,
Attorneys for the Defendants.

Cross Petition

Now come the same defendants who have answered hereinabove and for their cross petition against the defendants, E. A. Kelleam, Mrs. Nell Southard, J. R. Southard, Jr., and Joe E. Kelleam, say:

I. That the defendant E. A. Kelleam was a full brother of Leggette D. Kelleam, deceased; and Nell Southard was a full sister of Leggette D. Kelleam, deceased, and that J. R. Southard, Jr., is the son of Nell Southard and that Joe E. Kelleam is the son of E. A. Kelleam, and that the defendants herein, J. K. Perkins, Mrs. Fannie Bates, Mrs. Bessie Mathews, Mrs. Elouise Kulp and Glen Perkins are the children of and the sole surviving heirs of Mary Perkins nee

Kelleam, deceased, who died prior to the date of the death of Leggette D. Kelleam, and that said deceased, Mary Perkins, nee Kelleam, was a half sister of Leggette D. Kelleam, having a common father.

That the defendants herein, Mrs. Ethel Riddler and Mrs. Dorothy Payne, are the children and sole surviving heirs of J. M. Kelleam, deceased, who died in 1903, and that J. M. Kelleam was a half brother of the deceased, Leggette D. Kelleam.

That the defendants herein, Clifford Kelleam and Kathleen Kelleam, are the children and the sole surviving heirs of W. S. Kelleam, deceased, who was a half brother of Leggette D. Kelleam and that said W. S. Kelleam died in 1908.

That the defendants herein, Leggette Hall, Marguerite [fol. 15] Bradley (the same as Marguerite Bradley Kelleam), Lamar Hall, Mary Kate Hall (the same as M. K. Hall) and Kelleam Hall are the children and sole surviving heirs of Mrs. Kate Hall, nee Kelleam, deceased, who died in 1918 and who was a half sister of the deceased, Leggette D. Kelleam.

That the defendants herein, Dr. Fannin Kelleam, Francis Kelleam, Mrs. Jimmie Kelleam and Robert Kelleam are the children and sole surviving heirs of Dr. R. T. Kelleam, deceased, who was a half brother of Leggette D. Kelleam, and who died long prior to the death of Leggette D. Kelleam.

That Mrs. Fannie Bates and Mrs. Klyde Bates are the half sisters of the deceased, Leggette D. Kelleam, and that the said Mrs. Fannie Bates still lives, but that these answering defendants are informed and believe that since the death of Leggette D. Kelleam, Mrs. Klyde Bates has departed this life, but left surviving her Francis Richardson, James Russell Bates and Robert Bates, her children and Joe Bates, her surviving husband, who are her sole and only surviving heirs.

II. That Leggette D. Kelleam died a resident of Creek County, Oklahoma, on or about August 8, 1936, unmarried.

That between the date of his death on August 8, 1936, and August 25, 1936, the defendant, E. A. Kelleam, joined by the defendant, Nell Southard, petitioned the county Court of Creek County, Oklahoma, for the appointment of E. A. Kelleam as Administrator of the estate of Leggette D. Kelleam, deceased, and that in said petition said defendants repre-

sented to the County Court of Creek County, Oklahoma, that they were the sole and only surviving heirs of Leggette D. Kelleam, deceased, and that no notice of the hearing on said petition was necessary, because there were no other heirs. That this petition was filed with the Court Clerk of Creek County, Oklahoma, styled "In the Matter of the Estate of Leggette D. Kelleam, Deceased" and was assigned "Probate Cause No. 4354", a copy of said petition is attached hereto marked, for the purpose of identification, as these defendants' Exhibit "A" and made a part hereof, as fully as if copied at length herein. That on this petition a hearing was had and an order was made by the County Court directing the appointment of E. A. Kelleam as Administrator of the estate of Leggette D. Kelleam, deceased, a copy of said order is attached hereto marked, for the purpose of identification, as these defendants' Exhibit "B" and made a part [fol. 16] hereof, as fully as if copied at length herein. That under this order, E. A. Kelleam qualified as such Administrator by filing a bond and by taking the oath and upon which letters of administration were issued, a copy of the bond is attached hereto marked, for the purpose of identification, as these defendants' Exhibit "C" and made a part hereof, the same as if copied at length herein, and that a copy of the letters of administration are attached hereto marked, for the purpose of identification, as defendants' Exhibit "D" and made a part of this cross petition, the same as if copied at length herein. That immediately thereupon the said E. A. Kelleam took possession of all of the estate of Leggette D. Kelleam, deceased, and filed in this said cause an inventory and appraisement setting out in detail what estate he did receive and take unto his possession as such administrator, a copy of which said inventory and appraisement is attached to this cross petition marked, for the purpose of identification, as defendants' Exhibit "E" and made a part hereof, the same as if set out at length herein.

That sometime prior to the 18th day of May, 1937, the defendant, E. A. Kelleam, filed in the County Court of Creek County, Oklahoma, in the case numbered and styled herein concerning the estate of Leggette D. Kelleam, his said denominated administrator's final account and obtained the County Court to set a hearing for approval of same and for the determination of heirship and a decree of distribution on the 18th day of May, 1937. That a copy of said denominated final report of said Administrator is attached hereto marked,

for the purpose of identification, as defendants' Exhibit "F" and made a part of this cross petition, the same as if set out at length herein.

That sometime prior to May 18th, 1937, the date for the hearing on the final account as hereinabove stated, but the exact date of which is unknown to these defendants, the defendant Mrs. Fannie Bates, nee Kelleam and the heirs of Mrs. Klyde Bates, two of the half sisters of the deceased, evidently found out about the death of their brother, Leggette D. Kelleam and of the fact that the defendant E. K. Kelleam was administering on his estate and was about to obtain the County Court to distribute said estate in its entirety to E. A. Kelleam and Nell Southard, and that they immediately contacted the defendant E. A. Kelleam and the Defendant Nell Southard and on the 12th day of May, 1937, the defendant, E. A. Kelleam and Nell Southard, as denomi-
[fol. 17] nated first parties entered into a contract with Mrs. Fannie Bates, nee Kelleam, Francis Richardson, James Russell Bates, Robert Bates and Joe Bates, evidently the heirs of Mrs. Klyde Bates, upon the other hand denominated as second parties, concerning their interest or distributive share in their brother's estate, a copy of which contract and agreement is attached hereto marked, for the purpose of identification, as these defendants' Exhibit "G" and made a part of this cross petition, as fully as if copied at length herein.

That pursuant to the contract just immediately above referred to, the defendant, E. A. Kelleam and, as these defendants are informed, believe and allege it to be a fact, assisted by the defendant, Nell Southard, prepared and filed some kind of an amendment to or an amended final account and petition for determination of heirship and distribution of property, a copy of which is attached hereto marked, for the purpose of identification, as these defendants' Exhibit "H", and made a part of this cross petition, the same as if copied at length herein. And, on the 18th day of May, 1937, the County Court of Creek County, Oklahoma, took up and heard the final account and made a purported and pretended order covering same; denominated as "Order Approving Administrator's Final Account, Determining Heirship and Providing for Distribution of Estate," a copy of which said order of the County Court is attached hereto marked, for the purpose of identification as these defendants' Exhibit

"I" and made a part of this cross petition, the same as if copied at length herein.

That the record discloses that when the amended or supplemental administrator's final report and petition for heirship, and distribution was filed, there were some notices posted, but no notice was mailed to either of these defendants and cross petitioners and no notice was ever received by them and they did not know that their brother was dead or that his estate was being administered upon. That the order purporting to approve the administrator's final account and decree of heirship and order of distribution is void upon its face, because the statutory notices required under the laws of the State of Oklahoma to foreclose the world against any claim in the estate of the deceased was not given, and an extraneous fraud was perpetrated on the Court in procuring same and the Court was procured to make an order that has no foundation in law and which said Court was unauthorized to make, in that the County Court attempted to decree an [fol. 18] ancestral estate, so that this property, apparently, from the record, would descend to the defendants E. A. Kelleam and Nell Southard, the County Court attempting to decree an ancestral estate in personal property.

III. That the defendants, cross petitioners herein, charge that the defendants E. A. Kelleam and Nell Southard, upon the death of their brother, Leggette D. Kelleam and at the time of applying for letters of administration, confederated and connived together to perpetrate a fraud upon these cross petitioners by concealing from them the notice of the death of their brother, Leggette D. Kelleam, concealing from them the administration upon his estate, so as to procure a pretended distribution of all of said estate to the defendants, E. A. Kelleam and Nell Southard, and to carry out this fraudulent intent and purpose, the defendants, E. A. Kelleam and Nell Southard, first petitioned the County Court for the appointment of an Administrator, purposely omitting these defendants and cross petitioners as heirs, so that no notice would be required by the County Court and so that they would not know of the administration on said estate, and that thereafter and when the defendants, Mrs. Fannie Bates and Mrs. Klyde Bates, found out about this fraud and threatened to intervene in this cause and disclose to the Court the fraud that was being perpetrated, the said E. A. Kelleam and Nell Southard, immediately continued their designedly

fraudulent purpose by agreeing to pay these heirs that had discovered the fraud, the sum of Four Thousand Dollars ($4,000.00) to conceal this fraud and not disclose it to the Court and not disclose it to these cross petitioners until and so that the defendants E. A. Kelleam and Nell Southard could accomplish their fraudulent purpose of obtaining this property to be distributed to them in its entirety, without disclosing to the Court the existence of these cross petitioners.

But that, when this happened and upon advice of counsel, the said defendants E. A. Kelleam and Nell Southard conceived the unique idea of yet attempting by a legal technicality of barring these cross petitioners from ever being able to participate in and receive their distributive share from their brother's estate by hatching up and presenting to the County Court a pretended scheme and theory that this estate was an ancestral one, coming to the deceased, Legette D. Kelleam, from his mother, who was no relative of these cross petitioners, so as to cut out under the statute half brothers [fol. 19] and sisters. These cross petitioners charge that said scheme was a mere subterfuge engendered for the sole purpose of making it appear that a disclosure had been made to the County Court so as to attempt to foreclose the right of these cross petitioners to thereafter go into the issues, but that even upon this unique plan and in the zealousness and zeal of the said E. A. Kelleam and Nell Southard to get by with this fraudulent scheme, they still overlooked doing that thing which the statutes of the State of Oklahoma enjoins them to do, to-wit, giving notice to these cross petitioners by mailing to their last known address copies of the notice of the hearing upon the final account and petition for heirship and distribution, and these cross petitioners affirmatively charge that same was purposely omitted to keep them from finding out the fraud that was being perpetrated and that the said E. A. Kelleam and Nell Southard either knew the address and whereabouts of these cross petitioners, or could have found out through other members of the family that they full well did know where these cross petitioners were, but, on the contrary, they contracted with and agreed to pay and did pay the sum of Four Thousand Dollars ($4,000.00) to a part of the heirs in the same position as these cross petitioners, in order to have them keep and conceal the fraudulent intent and purpose of the said E. A. Kelleam and Nell

Southard which they, the said Mrs. Fannie Bates and Mrs. Klyde Bates, had discovered.

IV. These cross petitioners further charge that at the time E. A. Kelleam petitioned for his appointment as Administrator of the estate of Leggette D. Kelleam, he represented to the County Court of Creek County, Oklahoma, that he was a resident of Drumright, Creek County, Oklahoma, and procured the County Court to order his appointment upon the theory that he was a resident of Creek County, Oklahoma. These petitioners allege that they are informed and believe and, upon information and belief, allege to be a fact that at the time of this appointment, he was in fact a resident of Sells, Arizona, and was not entitled to be appointed Administrator, unless and until he did appoint a service agent in this State upon whom service of process could be had; that he did not do that at the time of his appointment and has never since done it, and has even now contested the right of the County Court to acquire jurisdiction over him because he was a non resident and service of process or of notice could not be had out of the County Court, [fol. 20] and these petitioners charge that that is a further overt act on his part in carrying out and in attempting to consummate his fraudulent purpose and design.

V. These cross petitioners say that at the time of the death of Leggette D. Kelleam, he left surviving him nine (9) sets of heirs, being represented by surviving brothers and sisters or half brothers and sisters, or the surviving heirs of half brothers and sisters, and that these cross petitioners herein are the sole and only surviving heirs of five (5) of these sets of heirs and that E. A. Kelleam represents another set of heirs, making a sixth (6th) set of heirs, and that Mrs. Nell Southard represents another set of heirs, making a seventh (7th) set of heirs, and that Mrs. Klyde Bates and Francis Bates represent still two additional sets of heirs, making the total of nine (9) sets of heirs; but that the last two mentioned sets of heirs have fully compromised and settled their claim to the distributive share in said estate and that the said E. A. Kelleam and Nell Southard, have, by the facts and under the circumstances hereinabove pleaded, taken or attempted to take the entire estate of Leggette D. Kelleam, but that in truth and in fact these cross petitioners are en-itled to, and upon the death of said Leggette D. Kelleam, took a distributive share in his estate equal to five

ninths (5/9ths) of the entire estate and they are entitled to 5/9th- of the property of which the deceased, Leggette D. Kelleam died seized and of which passed into the hands of E. A. Kelleam for the pretended purpose of administration, and that the title to said property, subject only to the right of the payment of debts therefrom, vested, upon the death of Leggette D. Kelleam, in these cross petitioners and that said property passed into the hands of E. A. Kelleam, impressed with the lien, right, title, equity and interest of these cross petitioners and that the said E. A. Kelleam took said property impressed with such liens and rights, the same was known to him and that under the laws of the State of Oklahoma, when he took the office of Administrator of said estate, there was created between him and these cross petitioners, as well as all other heirs, a fiduciary relation that required of E. A. Kelleam the exercise of the highest degree of faith and fidelity to seek out, find, deliver and transfer to these cross petitioners their distributive share in said estate. That this faith and fidelity owing by the said E. A. Kelleam toward these cross petitioners was breached, rav-
[fol. 21] ished and outraged, intentionally for the purpose of securing to himself and his sister all of said property and to cheat and defraud these cross petitioners thereof, and these cross petitioners are entitled to a judgment at the hands of this Honorable Court affirming and decreeing a 5/9ths interest in and to the property left in the estate of Leggette D. Kelleam, deceased, among which was the property listed in plaintiff's petition and other personal property shown by the inventory and that a lien be impressed upon all the property herein to insure and guarantee the payment to these cross petitioners of their distributive share in and to said estate, which is 5/9ths thereof, and that a Receiver be appointed to impound, hold and conserve said property until the rendition of the decree by this Honorable Court and that upon a determination of this litigation, said property be ordered and directed to be distributed, 5/9ths to these cross petitioners and that an accounting be had by the said E. A. Kelleam and Nell Southard to these cross petitioners, for the rents, issues and profits from their part of the property involved herein, together with their part of the corpus of said estate.

Wherefore, these petitioners pray this Honorable Court that a Receiver be appointed to take charge of the property

involved in this action; that the property involved in this action be decreed to be charged with a lien and ownership of these cross petitioners to the extent of 5/9ths of all of the estate of Leggette D. Kelleam, deceased; that these petitioners be decreed their distributive interest in and to said property and that they have an accounting from E. A. Kelleam and Nell Southard for their distributive share in the estate of their deceased brother, Leggette D. Kelleam, and that a lien be impressed upon all of the property, even that which would descend to E. A. Kelleam and Nell Southard for any sum or sums which by an accounting may be disclosed to belong to these petitioners, and for all other and further equitable relief that this Honorable Court may, under the facts and circumstances and the evidence that may be developed in the trial of this cause, deem these cross petitioners in equity and good conscience entitled to receive.

Heber Finch, Fred S. Armstrong and Pliney S. Fry,
by Heber Finch, Attorneys for the Defendants.

[fol. 22] (Jurat omitted per stipulation.)

Exhibits to Cross-Petition

EXHIBIT "A"

In the County Court within and for Creek County, State of Okla.

In the Matter of the Estate of Leggette D. Kelleam, Deceased

No. 4354

Petition for Letters of Administration

Comes now your petitioners, E. A. Kelleam and Nell Southard, nee Kelleam, and each of them, and respectfully show to the court:

That heretofore, to-wit, on or about August 8, 1936, Leggette D. Kelleam died in the hospital at Cushing, Oklahoma; that upon the day and date of his death he was an actual and bona fide resident of Drumright, Creek County, Oklahoma, and had property and estate in said county;

That said Leggette D. Kelleam at the day and date of his death was unmarried; that he left surviving him neither

wife, child or children, or issue of deceased child or children, nor mother, nor father, nor brother or sister, nor issue of deceased brothers and sisters except the following who are his sole and only heirs at law:

[fol. 23] E. A. Kelleam, c/o Tharel Hotel, Drumright, Oklahoma, age 54 years, and Nell Southard, nee Kelleam, Blanchard, Oklahoma, age 48 years.

That due and diligent search has been made to ascertain whether said Leggette D. Kelleam left a will and that none has been found; that your petitioners upon information and belief, as a result of said search, allege that said Leggette D. Kelleam died intestate;

That the value of the real and personal property owned and possessed by Leggette D. Kelleam at the day and date of his death is to your petitioners unknown but is believed to exceed in value the sum of $6,000.00; that the general character of said property is realty and personalty, consisting of city property, in Drumright and Oklahoma City, money, and interest in an oil lease, stocks, notes, etc., an accurate itemized list and valuation of which has not as yet been made.

Your petitioners further say that they have agreed among themselves that E. A. Kelleam be designated administrator of the estate of the said Leggette D. Kelleam; that said E. A. Kelleam is a suitable and proper person to serve in such capacity, and agrees to qualify and serve in said capacity in event of his appointment.

Wherefore, premises considered, your petitioners respectfully pray that said E. A. Kelleam be designated and appointed administrator of the estate of Leggette D. Kelleam and as such directed to proceed to administer upon said estate conformable to the laws of the State of Oklahoma and to do and perform such things as are necessarily incident to the administration thereof.

Nell Southard nee Kelleam, E. A. Kelleam, Petitioners. Glenn O. Young, Attorney for Petitioners.

VERIFICATION

STATE OF OKLAHOMA,
County of Creek, ss:

E. A. Kelleam and Nell Southard, nee Kelleam, and each of them, being first duly sworn according to law, depose and say:

That they have read and understand the above and fore-
[fol. 24] going petition and that the matters and things therein set forth are true and correct.

E. A. Kelleam, Nell Southard, nee Kelleam.

Subscribed and sworn to before the undersigned, a Notary Public in and for the State of Oklahoma, this the 13th day of August, 1936. Della Mae Johnson, Notary Public. My commission expires November 22, 1936.

EXHIBIT "B"

Order Appointing Administrator

Now on this the 13th day of August, 1936, this cause coming on for hearing on petition of E. A. Kelleam and Nell Southard, nee Kelleam, for the appointment of an administrator of the estate of Leggette D. Kelleam, and the court, having heard the evidence and being well and truly advised in the premises, finds that Leggette D. Kelleam died on August 8, 1936, that at the date of his death he was an actual and bona fide resident of Creek County, State of Oklahoma, having his residen*tc* in Drumright, in said county and state; that said Leggette D. Kelleam died intestate; that he left him surviving neither wife, child, nor children nor issue of deceased child or children, nor mother, nor father nor brothers or sisters, nor issue of deceased brothers or sisters save and except the petitioners E. A. Kelleam and Nell Southard, nee Kelleam, who are respectively a brother and sister and that E. A. Kelleam is entitled to be designated and appointed administrator of his estate upon the joint petition of him, the said E. A. Kelleam, and Nell Southard, nee Kelleam, they being the sole parties at interest, as revealed by said petition.

It Is Therefore, the Order, Judgment, and Decree of the court that said E. A. Kelleam be and he is hereby designated and appointed administrator of the estate of Leggette D. Kelleam condition- however upon his making, executing and filing bond conformable to law and subject to the approval of the undersigned as Judge of the County Court of Creek County in the sum of $12,000.00.

George D. Willhite, Judge.

[fol. 25] EXHIBIT "C"

Administrator's or Executor's Bond

THE STATE OF OKLAHOMA,
Creek County, ss.,
In County Court:

In the Matter of the Estate of Leggette D. Kelleam, Deceased

Know All Men By These Present-, That we, E. A. Kelleam, as principal and Maryland Casualty Company, Baltimore, Maryland, as sureties are held and firmly bound unto the State of Oklahoma, in the penal sum of Twelve Thousand and no/100 ($12,000.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

The Condition of the above obligation is such, that Whereas, by the order of the County Court of Creek County, State of Oklahoma, made and entered on the 13th day of August, A. D. 1936, the above named principal was appointed Administrator of the estate of Leggette D. Kelleam deceased, and letters of Administration were directed to issue to said principal, upon his taking and subscribing the oath required by law, and executing a bond to the State of Oklahoma, in the penal sum of Twelve Thousand and no/100ths ($12,000.00) Dollars, with two or more sureties to be approved by the Judge of said Court.

Now, if the above bounden principal shall faithfully execute the duties of such trust as such Administrator according to law, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, We have hereunto subscribed our names, this 14th day of August, A. D. 1936.

E. A. Kelleam, Principal, Maryland Casualty Company, by G. O. Shackleford, Attorney-in-fact, Surety.

I hereby approve the above bond this 24th day of August, 1936.

George D. Wilhite, County Judge.

[fol. 26] EXHIBIT "D"

Letters of Administration

STATE OF OKLAHOMA,
Creek County,
In the County Court:

In the Matter of the Estate of Leggette D. Kelleam, Deceased

E. A. Kelleam is hereby appointed administrator of the estate of Leggette D. Kelleam, Deceased.

Witness George D. Willhite, Judge of the County Court of Creek County, State of Oklahoma, with the seal thereof affixed, the 24 day of August, 1936.

George D. Willhite, County Judge.

STATE OF OKLAHOMA,
Creek County, ss:

I, E. A. Kelleam do solemnly swear that I will perform according to law the duties of administrator of the estate of Leggette D. Kelleam, Deceased. So help me God.

E. A. Kelleam.

Subscribed and sowrn to before me, this 24 day of August, 1936. George D. Willhite, County Judge.

EXHIBIT "E"

General Inventory and Appraisement

Estate of Leggette D. Kelleam, Deceased. In County Court

I, the undersigned, E. A. Kelleam, Administrator of the above Estate, make and return the following true and correct inventory of all the Real Estate and all the goods, chattels, rights, credits and Estate of Leggette D. Kelleam, deceased, except the homestead, which have come to my possession or knowledge.

EXHIBIT "E"—Continued

No.	Real Estate	App. Value
(1)	Lot 18, Blk. 5, Broadway Addn., Drumright Oklahoma	1,100.00
(2)	Lot 11, Blk. 1, Drumright Addn., Drumright, Oklahoma	400.00
(3)	Lot 7, Blk. 2, Belle Vern Addn., Oklahoma City, Okla.	3,000.00
(4)	Lot 8, Blk. 2, Belle Vern Addn., Oklahoma City, Okla.	
[fol. 27]		
(5)	Lot 29, Blk. 7, College Hill Addn., Oklahoma City, Okla.	2,000.00
(6)	Lot 30, Blk. 7, College Hill Addn., Oklahoma City, Okla.	
	Personal Property	
(7)	100 shares Idaho Copper Co., No. C33332 Par $1 a share	No Value
(8)	100 shares Idaho Copper Co., No. C48653 Par $1 a share	No Value
(9)	100 shares Idaho Copper Co., No. C48654 Par $1 a share	No Value
(10)	4 shares Crosley Radio Corp., Com. No. Co1811	120.00
(11)	Acct. No. 1571 Savings Dept., National Bank of Tulsa, Okla.	11.72
(12)	2 shares Crosley Radio Corp., Com. No. Ny 3354	68.00
(13)	96 shares Tri-State Royalty Corp., No. F 59 Tulsa, Okla.	No Value
(14)	300 shares Irwin-Davis Petroleum—Okmulgee, Oklahoma	No Value
(15)	One Royalty Deed, Undivided 10 Acre Int. in 640 Acres described as Survey 1, Blk. B 1 Public School land Winkler County, Texas	No Value
(15a)	Mineral Deed, Undivided 5 Acres *Ont.* North Half (N½) of the North East Quarter (NE¼) of Section Twenty three (23) Township Twelve (12) North Range Three (3) E	No Value
(16)	10 shares No. 246 Capitol Oil & Gas Co., Wichita, Texas	No Value
(17)	10 shares No. 147 Okmulgee Oil & Leasing Co., Ft. Worth, Texas	No Value
(18)	10 shares No. 146 Okmulgee Oil & Gas Co., Ft. Worth, Tx.	No Value
(19)	28 shares No. 380 Sneed Petroleum Co., Tulsa, Oklahoma	No Value
(20)	528/600ths *ogs* Share No. T 42 Scrip Certificate in *Capitol* Stock, Sneed Petroleum Co.	No Value
(21)	100 shares Studebaker Corp., No. NY 160490 Com.	No Value

EXHIBIT "E"—Continued

[fol. 28]

No.	Real Estate	App. Value
(22)	One Oil & Gas Lease from John D. Hill & Nellie Hill, Morris Summy & Lucie Summy to L. D. Kelleam and F. E. Vensel on Lots 6, 8 and 12 Sec. 31 Twp. 19N, R 7 E	No Value
(23)	50 shares Home State Voting Trust, of Home State Ins. Company	150.00
(24)	One invoice of Furniture in Drumright House	15.00
(25)	One Ford Coupe 1936 Model with Radio Motor # 18-2160494 actual cost $657.77	400.00
(26)	One Liquidating Agents Certificate No. 282 $115.41 half pd.	11.50
(27)	One contract between L. D. Kelleam and Harry L. Charles and Virginia Charles giving L. D. Kelleam one half interest in Royalty on book—address Wichita, Kansas	No Value
(28)	One Certificate No. 207—10 shares in Home Building & Loan Ass'n., Drumright, Oklahoma, Paid $390.00	358.00
(29)	Two shares Standard Oil Co., of Indiana No. 043930	74.00
(30)	4/10ths of a share No. 385 American State Bank, Charleston, Ark. Par $25.00	10.00
(31)	Two shares, No. 431 American State Bank, Charleston, Ark. Par $25.00	50.00
(32)	1/5th of a share No. VS23012 Columbia Oil & Gas Corp.,	No Value
(33)	1/5th of a scrip share Certificate, Columbia Oil & Gasoline Corp.,	No Value
(34)	10 shares No. C03411, Columbia Oil & Gas Corp.	30.00
(35)	5 shares No. C01624 Oklahoma Gas & Elec. Co., Par $100.	500.00
(36)	4 shares No. 9767 Oklahoma Gas & Elec. Co., Par $100.	400.00
(37)	Special Over writing Agreement of N. A. Evans Co., Tulsa Okla. Nos., 529, 530, 531, 532, 533, 534, 535, and 536	No Value
(38)	Two shares No. CN272763 Columbia Gas & Elec. Corp., Com. New York	42.00
(39)	One Oil & Gas Lease No. 10407 From W. M. Shumaker and Elizabeth Shumaker to C. G. Giblin & L. D. Kelleam	No Value

[fol.29]

(40)	One No. 99381 C. S. U. B. 5% Gold Deb—due 1950	810.00
(41)	7/16ths Int. Sam Vance Lease; SW¼ SW¼ Sec. 6-18-7 Creek County	8,610.00
(42)	One Cashier's Ck. American State Bank Charleston, Ark.	62.80
(43)	1/32 Over-riding Royalty Interest—Sam Vance Lease	1,400.00

EXHIBIT "E"—Continued

No.	Real Estate	App. Value
(44)	Nat'l Aid Life Ass'n. Policy No. M 6 803	1,000.00
(45)	Nat'l Life Insurance Co., of U. S. A. Policy No. 115532	732.00
(46)	100 shares Common Wealth Southern	312.50
	Money belonging to deceased at time of death	
	Cash	$2,437.96

Bonds, Mortgages, Notes and Accounts

	By Whom Owing	Date M'th	Day	Yr.	Amount	Credits	When Pd.	App. Value
(47)	Nell Southard, Blanchard, Okla.	1/16/		1927	$700.00	None		No Value
(48)	R. J. & Nell Southard	4/ 6/		1929	4000.00	None		No Value
(49)	Grover Keely	6/12/		1929	100.00	None		No Value
(50)	R. J. & Nell Southard	1/10/		1931	1000.00	None		No Value
(51)	Pleas Carter	4/ 3/		1935	25.00	None		No Value
(52)	R. J. & Nell Southard	9/ 8/		1931	700.00	None		No Value
(53)	J. M. Pinkston & Lou Ann Pinkston	6/22/		1929	400.00	130.00		No Value
(54)	E. E. Simpson Acct.				590.77			$590.77
(55)	I. Nadel Acct.				657.00			657.00
	Total appraised value of said estate							$25,353.25

Dated this 18th day of September, 1926.

E. A. KELLEAM (Signed).

[fols. 30-31] Oath of Executor or Administrator

STATE OF OKLAHOMA,
Creek County, ss:

E. A. Kelleam being first duly sworn says that he is the administrator of the Estate of Leggette D. Kelleam Deceased, that the above inventory by him made contains a true statement of all the estate of said decedent, except the homestead, that has come to his knowledge and possession and particular-y of all moneys belonging to said decedent, and of all just claims of the said decedent against said affiant.

E. A. Kelleam (Signed), Administrator.

Subscribed and sworn to before me September 3, A. D. 1936. My commission expires November 22, 1936. Della Mae Johnson (Signed).

* * * * * * *

[fols. 32-38] (Exhibit "F" omitted per stipulation.)

[fol. 39] EXHIBIT "G"

Stipulation of Settlement

This Contract and Agreement made and entered into between E. A. Kelleam and Nell Southard, nee Kelleam, brother and sister, respectively, of Leggette D. Kelleam, deceased, parties of the first part, and Mrs. Fannie Bates, nee Kelleam, surviving paternal half sister of Leggette D. Kelleam, deceased, and Francis Richardson, James Russell Bates and Robert Bates, children of Mrs. Klyde Bates, nee Kelleam, deceased, and Joe Bates, the surviving husband of Mrs. Klyde Bates, nee Kelleam, deceased, the said Mrs. Klyde Bates, nee Kelleam, being a paternal half sister of Leggette D. Kelleam, deceased, parties of the second part, Witnesseth:

Whereas parties of the first part have filed in the County Court of Creek County, Oklahoma, in Probate Cause No. [fol. 40] 4354, being entitled: In the Matter of the Estate of Leggette D. Kelleam, Deceased a petition for the approval of the final account, for decree of distribution, and for the determination of heirship of said estate, wherein parties of the first part, together with E. A. Kelleam, as administrator of such estate, claim that all of said estate left by the deceased at the time of his death was a maternal ancestral estate and that by reason thereof the parties of the second part are not entitled to share in the distribution of said estate; and

Whereas, parties of the second part contend that as half sister of the deceased, and as heirs of a half sister of the deceased, Mrs. Klyde Bates, nee Kelleam, deceased, they are entitled to share in the distribution of said estate for the reason that parties of the second part contend that the estate of which the deceased died seized was not an ancestral estate and that the heirs of the half blood inherit an equal share with the heirs of the whole blood.

Now, Wherefore, it is the purpose of this contract and agreement to settle and compromise the contentions between the parties hereto for a consideration of $4,000.00, to be paid by parties of the first part to the parties of the second part, as follows, to-wit:

Parties of the first part hereby agree to place in escrow and to impound herewith in the Citizens State Bank at Drumright, Oklahoma, the sum of $4,000.00, which $4,000.00

shall be delivered to parties of the second part upon the following conditions, to-wit:

That parties of the second part agree that they will not appear in the County Court of Creek County, Oklahoma, and question the petition for approval of the final account and distribution of said estate which is hereinabove mentioned and which is set for hearing on the 18th day of May 1937, and that parties of the second part will not appeal from said order and judgment.

It is further understood and agreed that if such agreement is performed by parties of the second part, and if no other party interested in such estate should appear in the County Court of Creek County, Oklahoma and contest or question the petition for distribution of said estate hereinabove mentioned, and if no person claiming to be interested in the estate should appeal from such order and [fol. 41] judgment as may be entered by the County Court of Creek County, Oklahoma, on the 18th day of May, 1937, then and in that event the parties of the second part shall be entitled to withdraw from the bank hereinabove mentioned as their individual property the sum of $4,000.00 herewith deposited in escrow.

It is further contracted and agreed that if any party claiming to be interested in such estate should appear in the County Court of Creek County, Oklahoma, at any time subsequent to this date and prior to the expiration of thirty days succeeding the 18th day of May, 1937, and question the right of parties of the first part under their petition for distribution which they have filed as hereinabove mentioned, or if the County Court of Creek County, Oklahoma, should fail to grant their petition for distribution of the estate as prayed for in said petition, or if an appeal should be lodged against such order of the County Court of Creek County, Oklahoma, providing for the distribution of said estate within a period of thirty days succeeding the 18th day of May, 1937, then it is understood and agreed that the parties of the first part shall be entitled to withdraw in their own right the sum of $4,000.00 herewith deposited in said bank, and it is further agreed and understood that if the last mention- contingency should occur that parties of the second part and none of them shall be in any wise prejudiced in the rights which they now have a claim in and to such estate, and shall have the right and authority to either appear before the County Court of Creek County, Okla-

homa, and set forth their claims as heirs to the estate of Leggette D. Kelleam, deceased, or shall have the right to appeal to the District Court of Creek County, Oklahoma, without bond on their part; it being expressly understood and provided that nothing in this contract or agreement shall prejudice the rights of the parties of the second part to set up and make lawful claim of their interest in said estate in the event the parties of the first part are entitled to a return to them of the $4,000.00 herewith deposited under the terms of this contract.

It is further stipulated that the parties of the second part by entering into this stipulation shall not be entering their appearance in the County Court of Creek County, Oklahoma, on the 18th day of May, 1937, or at any subsequent date, and that in the event parties of the second part de-
[fol. 42] sire to appeal from the order of the County Court of Creek County, Oklahoma, that parties of the second part shall have thirty days to appeal to the District Court of Creek County, Oklahoma, after the entry of the judgment upon final distribution of the estate.

It is further understood and agreed that in event the conditions and provisions of this contract are fulfilled, and that parties of the second part receive and are paid the sum of $4,000.00, as herein provided, that this contract shall constitute an assignment of any and all right, title or interest which they may have or claim to parties of the first part in and to the estate of Leggette D. Kelleam, deceased.

It is further understood and agreed that if all of the conditions of this contract and agreement are complied with so as to entitle parties of the second part to withdraw the sum of $4,000.00 herewith deposited, that upon being advised in writing by Luster Cook and Streeter Speakman to such effect, that such bank shall be authorized and directed to pay the sum of $4,000.00 by draft to Pearson & Pearson as attorneys for parties of the second part, and to deliver said draft to Luster Cook, Attorney for parties of the second part.

It is further understood and agreed that parties of the second part represent and guarantee to parties of the first part that Mrs. Klyde Bates, nee Kelleam, died on the 9th day of May, 1937, at Fayetteville, State of Arkansas, and that the parties of the second part named in the first and opening paragraph of this instrument constitute the sole

and only heirs at law, devisees and legattes of such deceased Mrs. Klyde Bates, nee Kelleam.

It is further understood and agreed that this contract shall be binding upon the parties hereto, their executors, administrators and assigns, and that such contract shall become effective and binding upon all parties hereto upon delivery of the original to said bank, together with the sum of $4,000.00 as

Witness our hands this 12th day of May, 1937.

(Signed) E. A. Kelleam, (Signed) Nell Southard, Parties of the First Part. (Signed) O. K. Streeter [fol. 43] Speakman, Attorneys for Parties of the first part.

Mrs. Fannie Bates, nee Kelleam, Francis Richardson, James Russell Bates, Robert Bates, Joe Bates, Parties of the Second Part. By Pearson & Pearson, Attorneys for Parties of the Second Part. By (Signed) Tom Pearson, By (Signed) Luster Cook, Attorneys for Parties of the Second Part.

Note: (The parties whose names are signed by the attorneys also signed the original personally.)

EXHIBIT "H"

Amended Petition for Approval of Final Account and for Decree Determining Heirship and Distribution of Estates

Comes now E. A. Kelleam, Administrator of the estate of Leggette D. Kelleam, deceased, and E. A. Kelleam and Nell Southard, nee Kelleam, in their own personal right, and for the purpose of this amended petition allege and state:

That heretofore, to-wit, on the 8th day of August, 1936, Leggette D. Kelleam departed this life, he being an actual resident in good faith of Creek County, State of Oklahoma, and having property in said county; that the deceased was unmarried and left surviving him neither child, or children, or issue of deceased children, nor mother, nor father, nor brother or sister, nor issue of deceased brothers or sisters except the following who are his sole and only heirs at law, E. A. Kelleam, brother, age 54 years, whose residence is Sells, Arizona, and Nell Southard, nee Kelleam, age 48

years, Blanchard, Oklahoma. That the deceased left surviving him no other full brothers or sisters.

That he left surviving him the following brothers and sisters of half blood, they being paternal half brothers and sisters, together with the following children of deceased paternal half brothers and sisters, to-wit: Mrs. Klyde Bates, [fol. 44] nee Kelleam, half sister, Fayetteville, Arkansas; Mrs. Fannie Bates, nee Kelleam, half sister, Fayetteville, Arkansas; Mary Perkins, nee Kelleam, deceased, was a half sister who died about the year 1932, and left surviving her the following children who survive: J. K. Perkins, Mrs. Fannie Bates, Glenn Perkins of Long Beach, California, Bessie Matthews, Santa Anna, California, Mrs. Elouise Culp of Long Beach, California; J. M. Kelleam was a half brother of the deceased, and died about the year 1903, leaving surviving him the following children who still survive; Mrs. Ethel Riddler, Ft. Smith, Arkansas, and Mrs. Dorothy Kelleam Payne, W. S. Kelleam was a half brother of the deceased, who died in the year 1908, leaving surviving him the following children, who still survive: Clifford Kelleam, and Kathleen Kelleam; Mrs. Katherine Hall, nee Kelleam, was a half sister of the deceased. She died in the year 1918, leaving surviving her the following children who still survive: Leggette Hall, Conway, Arkansas, Lamar Hall, Waldron, Arkansas, Marguerite Bradley, nee Hall, Kelleam Hall, and Mary Kate Hall; R. T. Kelleam was a half brother of the deceased, who died at a date unknown to these petitioners but prior to the death of the deceased, Leggette D. Kelleam, and the said R. T. Kelleam left surviving him the following children who still survive: F. Q. Kelleam, Amarillo, Texas, Francis Kelleam, Amarillo, Texas, Robert Kelleam, and Jim Kelleam, Eudoria, Arkansas.

Petitioners further say that the deceased died intestate and that after his death, upon petition to this court, petitioner, E. A. Kelleam was appointed administrator of his estate and such estate has been duly administered upon in all respects as provided and required by the laws of the State of Oklahoma; that said property has been duly inventoried and appraised, notice to creditors was given in all respects as provided by the laws of this state, on the 25th day of August, 1936; that all just claims have been allowed and paid and that the said administrator has pre-

pared and filed herein his final account wherein is correctly set forth all his doings as administrator of the estate of Leggette D. Kelleam, including all items of property and money received, and all claims paid, together with proper vouchers.

Your petitioners further show that Mary Ayres Kelleam, who is one and the same person as M. A. Kelleam, was the mother of the deceased, Leggette D. Kelleam, and of E. A. [fol. 45] Kelleam, and Nell Southard, nee Kelleam; that she was the step-mother of all the half brothers and sisters of the deceased hereinabove mentioned and that the said E. A. Kelleam and Nell Southard, nee Kelleam, are the only heirs of said deceased who are of the blood of the said mother, M. A. Kelleam; that all the property of which the deceased died seized was an ancestral estate coming from his said mother to the deceased. That the deceased owned at the time of his death an undivided seven-sixteenths (7/16) of the working interest and a one-eighth (1/8) of the overriding interest in the Sam Vance lease, that is to say, the following described property, to-wit:

An undivided seven-sixteenths (7/16) of the working interest and a one-eighth (1/8) of the overriding interest in a leasehold for oil and gas covering the Southwest Quarter of the Southwest Quarter of Section 6, Township 18 North, Range 7 East, Creek County, Oklahoma:

that the said mother of the deceased, during her life time and as an advancement to the said Leggette D. Kelleam, in lieu of a portion of his share of her estate, and as a gift, purchased for him all property owned by the deceased, Leggette D. Kelleam, at the time of his death.

That for the reasons hereinabove stated the said E. A. Kelleam and Nell Southard, nee Kelleam, are the sole and only heirs of the deceased, Leggette D. Kelleam, who are entitled to inherit any of such property of which he died seized and possessed.

Wherefore, Premises considered, your petitioners respectfully pray that the final account of said administrator as filed herein, together with this petition for distribution and determination of heirs, be set for hearing on a day certain to be fixed by this court; that due and legal notice of the day and date thereof be given as provided by law, and that upon final hearing herein this court, by its judgment,

find and determine that all of the property, real, personal and mixed, of which the deceased died seized, was a maternal ancestral estate, and that E. A. Kelleam, and Nell Southard, Nee Kelleam, are the sole and only heirs of the deceased entitled to inherit from the deceased, Leggette D. Kelleam; that all of the half brothers and sisters, together with the children and heirs of the said deceased half brothers and sisters hereinabove named, by order and judgment of this court, be, excluded from inheriting any property of which [fol. 46] the deceased died seized or possessed; and that all of the property, real, personal or mixed, wherever situated, of which the said Leggette D. Kelleam died seized or possessed, be vested in E. A. Kelleam and Nell Southard, nee Kelleam, each share and share alike, absolutely free, clear and discharged from all claims and demands of any other person whomsoever.

That upon making distribution of such estate as hereinabove set forth and described that the said administrator be finally discharged and released from any *and* liability herein and that his bondsmen be discharged and released.

E. A. Kelleam, Administrator; Nell Southard, nee Kelleam; Speakman & Speakman, Attorneys for Petitioners.

EXHIBIT "I"

Order Approving Administrator's Final Account, Determining Heirship, and Providing for Distribution of Estate

Now, on this 18th day of May, 1937, the above entitled action comes on regularly for hearing upon the final account filed herein by E. A. Kelleam, Administrator of said estate, together with the Amended Petition filed herein on the 27th day of April, 1937, per permission of court, for the approval of final account, for a decree determining heirship and for distribution of the estate; said administrator appearing in person and by his attorneys of record, Glenn O. Young, and Speakman and Speakman, and said E. A. Kelleam, in person, and Nell Southard, nee Kelleam, appearing by their attorneys, Speakman & Speakman, and the court being duly advised in the premises finds that said action was, by order of this court, upon the 25th day of March, 1937,

continued until the 26th day of April, 1937, and thereafter on the 26th day of April, 1937, by order of this court continued until this day and date with permission to the said petitioners to file an amended petition herein, which was filed on the 27th day of April, 1937; that publication notice was duly given in the Sapulpa Herald for hearing on this day and date, upon the administrator's final account and for distribution of said estate in all respects as [fol. 47] provided and required by the laws of this state and conforming to the former orders of this court; and

Thereupon, the following named persons who appeared in the last publication notice were three times called in open court and failed to appear either in person or by their attorneys, as follows, to-wit: Mrs. Klyde Bates, nee Kelleam, Mrs. Fannie Bates, nee Kelleam, J. K. Perkins, Mrs. Fannie Bates, Glenn Perkins, Bessie Matthews, Mrs. Elouise Culp, Mrs. Ethel Riddler, Mrs. Dorothy Kelleam Payne, Clifford Kelleam, Kathleen Kelleam, Leggette Hall, Lamar Hall, Marguerite Bradley, nee Hall, Kelleam Hall, Mary Kate Hall, F. Q. Kelleam, Francis Kelleam, Robert Kelleam, and Jim Kelleam; and

Thereupon, said proceedings were called for trial and the said administrator and petitioners above named introduced their evidence and rested, and the court being fully advised in the premises, upon the evidence adduced, finds:

That Leggette D. Kelleam died intestate on the 8th day of August, 1936, while an actual resident in good faith of Creek County, State of Oklahoma, and having property in said county; that the deceased was unmarried and left surviving him neither child, or children, or issue of deceased children, nor mother or father, nor brother or sister, nor issue of deceased brothers or sisters except the following who are his sole and only heirs at law, E. A. Kelleam, brother age 54 years, whose residence is Sells, Arizona, and Nell Southard, nee Kelleam, age 48 years, Blanchard, Oklahoma. That the deceased left surviving him no other brothers or sisters.

That he left surviving him the following brothers and sisters of half blood, they being paternal half brothers and sisters, together with the following children of deceased paternal half brothers and sisters, to-wit; Mrs. Klyde Bates, nee Kelleam, half sister, Fayetteville, Arkansas, and Mrs.

Fannie Bates, nee Kelleam, half sister, Fayetteville, Arkansas; Mary Perkins, Kelleam, deceased, was a half sister who died about the year 1932, and left surviving her the following children who survive: J. K. Perkins, Mrs. Fannie Bates, Glenn Perkins of Long Beach, California, Bessie Matthews, Santa Anna, California, Mrs. Elouise Culp of Long Beach, California; J. M. Kelleam was a half brother of the deceased, and died about the year 1903, leaving surviving him the following children who still survive: Mrs. Ethel Riddler, Ft. Smith, Arkansas, and Mrs. Dorothy [fol. 48] Kelleam Payne; W. S. Kelleam was a half brother of the deceased, who died in the year of 1908, leaving surviving him the following children, who still survive: Clifford Kelleam, and Kathleen Kelleam; Mrs. Kathrine Hall, nee Kelleam, was a half sister of the deceased. She died in the year of 1918, leaving surviving her the following children who still survive: Leggette Hall, Conway, Arkansas, Lamar Hall, Waldron, Arkansas, Marguerite Bradley, nee Hall, Kelleam Hall, and Mary Kate Hall; R. T. Kelleam was a half brother of the deceased, who died at a date unknown to these petitioners but prior to the death of the deceased, Leggette D. Kelleam, and the said R. T. Kelleam left surviving him the following children who still survive: F. Q. Kelleam, Amarillo, Texas, Francis Kelleam, Amarillo, Texas, Robert Kelleam, and Jim Kelleam, Eudoria, Arkansas.

That the deceased died intestate and that after his death, upon petition to this court, petitioner, E. A. Kelleam was appointed administrator of his estate and such estate has been duly administered upon in all respects as provided and required by the laws of the State of Oklahoma; that the said property has been duly inventoried and appraised, notice to creditors was given in all respects as provided by the laws of this state, on the 25th day of August, 1936; that all just claims have been allowed and paid and that the said administrator has prepared and filed herein his final account wherein is correctly set forth all his doings as administrator of the estate of Leggette D. Kelleam, including all items of property and money received, and all claims paid, together with proper vouchers.

That Mary Ayres Kelleam, who is one and the same person as M. A. Kelleam, was the mother of the deceased, Leggette D. Kelleam, and E. A. Kelleam, and Nell Southard, nee Kelleam; that she was the step-mother of all the half

brothers and sisters of the deceased hereinabove mentioned and that the said E. A. Kelleam and Nell Southard, nee Kelleam, are the only heirs of said deceased who are of the blood of the said mother, M. A. Kelleam; that all the property of which the deceased died seized was an ancestral estate coming from said mother to the deceased.

That the deceased owned at the time of his death the following property, to-wit:

[fol. 49] Lot 18, Block 5, Broadway Addition to Drumright, Oklahoma;

Lot 11, Block 1, Drumright Addition to Drumright, Oklahoma;

Lot 7, Block 2, Belle Vern Addition to Okla. City, Oklahoma;

Lot 8, Block 2, Belle Vern Addition to Okla. City, Oklahoma;

Lot 29, Block 7, College Hill Addition to Okla. City, Oklahoma;

Lot 30, Block 7, College Hill Addition to Okla. City, Oklahoma;

100 shares of Idaho Copper Company No. C33332

100 shares Idaho Copper Company No. C48653

100 shares Idaho Copper Company No. C48654

4 shares Crosley Radio Corporation, Common, No. C01811

Account No. 1571 Savings Dep., National Bank of Tulsa, Okla.;

2 shares Crosley Radio Corporation, Common No. NY 3354

96 shares Tri-State Royalty Corporation, No. F59, Tulsa, Okla.;

300 shares Irwin-Davis Petroleum, Okmulgee, Oklahoma;

One Royalty Deed, Undivided 10 acre int., in 640 acres, described as Survey 1, Block B. 1, Public School land, Winkler County, Texas;

Mineral Deed, Undivided 5 Acres Int. North-half of the Northeast Quarter of Section 23, Township 12 North, Range 3 East;

10 shares No. 246 Capitol Oil & Gas Co., Wichita, Texas;

10 shares No. 147, Okmulgee Oil & Leasing Co., Ft. Worth, Tex.;

10 shares No. 146, Okmulgee Oil & Gas Co., Ft. Worth, Texas;

28 shares No. 380 Sneed Petroleum Company, Tulsa, Oklahoma;

528/600ths of a share No. T 42 Scrip Certification Capitol Stock, Sneed Petroleum Company;

100 shares Studebaker Corporation, No. NY 106490 Common;

One Oil & Gas lease from John D. Hill and Nellie Hill, Morris Summy and Lucie Summy to L. D. Kelleam and [fol. 50] F. E. Vensel on Lots 6, 8, and 12, Section 31, Township 19 North, Range 7 East;

50 shares Home State Voting Trust, of Home State Ins. Co.;

One invoice of furniture in Drumright house;

One Ford Coupe 1936 Model with Radio Motor No. 18-2160494;

One Liquidating Agents Certificate No. 282.

One contract between L. D. Kelleam and Harry Charles, and Virginia S. Charles giving L. D. Kelleam one half interest in Royalty on book;

One certificate No. 207—10 shares in Home Building & Loan, Drumright, Oklahoma;

Two shares Standard Oil Co. of Indiana No. 043930;

4/10th of a share, No. 385 American State Bank, Charleston, Arkansas;

1/5th of a share No. VS 23021 Columbia Oil & Gas Corporation;

1/5th of a scrip Share Certificate, Columbia Oil & Gasoline Corp.;

10 shares No. C03411, Columbia Oil & Gas Corporation;

5 shares No. C01624, Oklahoma Gas & Electric Co.;

4 shares No. 9767 Oklahoma Gas & Electric Company;

Special overwriting agreement of M. A. Evans Co., Tulsa, Okla.;

Nos. 529, 530, 531, 532, 533, 534, 535, and 536;

Two shares No. CN272763 Columbia Gas & Elect. Corporation, Common, New York;

One oil and gas lease No. 10407 from W. M. Shumaker and Elizabeth Shumaker to C. G. Giblin and L. D. Kellean;

One No. 9938; C. S. U. B. 5% Gold Deb. due 1950

An undivided 7/16th of the working interest and a 1/8 of the overriding royalty interest in a leasehold for oil and gas known as the Sam Vance lease, and covering the Southwest Quarter of the Southwest Quarter of Section 6, Township 18 North, Range 7 East, Creek County, Oklahoma;

One Cashier's check—American State Bank, Charleston, Ark.;

National Aid Life Association Policy No. M 6,803

[fol. 51] National Life Insurance Co. of U. S. A. Policy No. 115532;

100 shares Common Wealth Southern;

E. E. Simpson, account;

I. Nadel, account;

That the said mother of the deceased, during her life time and as an advancement to the said Leggette D. Kelleam, in lieu of a portion of his share of her estate, and as a gift, purchased for him all property owned by the deceased Leggette D. Kelleam, at the time of his death, and all of said property constituted a material ancestral estate.

That by reason thereof E. A. Kelleam and Nell Southard, nee Kelleam are the sole and only heirs of the deceased, Leggette D. Kelleam, and are entitled to inherit each an undivided one-half interest, share and share alike, in and to all of the estate and property, real, personal or mixed of which the deceased died seized.

The court further finds that since the former order of this court entered herein on the 26th day of March, 1937, the administratrix has incurred the following items of expense:

J. M. Scott for operating expenses Samuel Vance lease	$165.06
Court costs for publication fee	12.50
Attorneys fees and expenses Speakman & Speakman for special services rendered to the administrator in connection with the final account	315.00

making a total of $492.56 for which said administrator is entitled to credit and deduction from the amount, now on hand in addition to the amount heretofore approved by order and judgment of this court.

It is, Therefore, Ordered, Adjudged a*dn* Decreed that the final account of said administrator be and the same is hereby in all things approved and confirmed.

It is further Considered, Ordered and Adjudged that all of the property of which the said Leggette D. Kelleam died seized was a maternal ancestral estate; that for such reason none of the half brothers or sisters or the de-cendants of half brothers or sisters surviving the said Leggette D. Kelleam are entitled to inherit any of the property of which

the deceased, Leggette D. Kelleam died seized, and each and all of such half brothers and sisters or the descendants of [fol. 52] any deceased half brothers or sisters are hereby excluded from such inheritance.

It is further ordered, Adjudged and Decreed that upon the death of the said Leggette D. Kelleam all of the property of which he died seized, including all real estate, personal property and mixed property hereinabove set forth and described, descended to and vested in E. A. Kelleam and Nell Southard, nee Kelleam, the full brother and sister of Leggette D. Kelleam, in equal shares, share and share alike; and they are hereby adjudged and decreed to be the owners each of an undivided one-half interest in all real estate in fee simple, and each the owner of an undivided one-half interest in all personal and mixed property, to the exclusion of any and all persons whomsoever.

It is further Ordered and Adjudged that said administrator is hereby ordered and directed to make distribution of all property of the deceased which has come into his hands as such administrator, in equal shares to the said E. A. Kelleam and Nell Southard, nee Kelleam, and to take their receipts therefor and upon doing so the said administrator and his official bondsmen be discharged from further liability herein.

George D. Willhite, County Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION OF PLAINTIFF FOR ORDER OF SERVICE ON DEFENDANT OUTSIDE OF DISTRICT—Filed June 25, 1938

Now comes the plaintiff by its attorneys of record, Green and Farmer and moves the Court to make and enter an order herein for service on the defendants herein, A. E. Kelleam and Joe E. Kelleam, outside this district and outside of the State of Oklahoma, and shows the Court that said defendants reside at Sells, Arizona, outside the Northern District of Oklahoma and outside the State of Oklahoma, and that they cannot be served with personal process out of this court; and for that reason they should be served

outside the district as provided for in the Statute for extended or substitute service.

Green and Farmer, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 53] IN UNITED STATES DISTRICT COURT

ORDER FOR SERVICE ON DEFENDANTS OUTSIDE OF DISTRICT—Filed July 25, 1938

Upon motion of Green and Farmer, attorneys for plaintiff in the above case and it appearing to the Court that this is an action to impound property and impress a lien on certain real and personal property located in the State of Oklahoma, and a part of said property being in the Northern District and is one of those classes of action enumerated in Sec. 57 of the Judicial Code, and that the defendants A. E. Kelleam and Joe Kelleam are not inhabitants of nor found within this District or within the state of Oklahoma, and that they have not voluntarily appeared in this action:

It Is, Therefore, Ordered, Adjudged and Decreed that the said A. E. Kelleam and Joe Kelleam, defendants herein, must appear, plead, answer or demur to the Bill of Complaint of the plaintiff and the Cross-Bills of Complaint by the other defendants herein by the 7th day of September, 1938, and in default thereof the Court will proceed to the hearing and adjudication of said suit in the same manner as if the said A. E. Kelleam and Joe Kelleam had been served with process in this District.

It Is Further Ordered that certified copies of this Order be served on the person or persons in possession or charge of the property involved in this action, if any there be.

Dated this 25th day of July, 1938.

F. E. Kennamer, District Judge.

[File endorsement omitted.]

MARSHAL'S RETURN OF SERVICE ON CERTIFIED COPY OF ORDER FOR SERVICE OUTSIDE OF DISTRICT

UNITED STATES OF AMERICA,
District of Arizona, ss:

I hereby certify and return that I served the annexed Order for Service on Defendants Outside District on the

therein named Joe E. Kelleam by handing to and leaving a true and correct copy thereof with Joe E. Kelleam personally at Sacaton in said District on the 9th day of August, A. D. 1938.

B. J. McKinney, U. S. Marshal, by F. A. Kickernell, Deputy.

[fol. 54] RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
District of Arizona, ss:

I hereby certify and return that I served the annexed Order for Service on Defendants Outside of District on the therein named E. A. Kelleam by handing to and leaving a true and correct copy thereof with E. A. Kelleam at Sells in said district on the 23d day of August, A. D. 1938.

B. J. McKinney, U. S. Marshal, by Richard S. Griffith, Deputy.

Endorsed: Filed August 27, 1938. H. P. Warfield, Clerk.

IN UNITED STATES DISTRICT COURT

SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION OF E. A. KELLEAM—Filed September 3, 1938

Comes now the defendant E. A. Kelleam and appearing specially and for the purpose of this motion only, respectfully shows to the court that process was not issued, served and returned herein as required by law and that this honorable court is without jurisdiction over the person of this defendant and the subject matter of this controversy.

Wherefore defendant respectfully prays that this cause be dismissed as to him and for want of jurisdiction.

Glenn O. Young, Attorney for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SPECIAL APPEARANCE AND MOTION TO DISMISS OF JOE E. KELLEAM—Filed September 3, 1938

Comes now the defendant Joe E. Kelleam and appearing specially and for the purpose of this motion only, respect-

fully shows to the court that process was not issued, served and returned herein as required by law and that this honorable court is without jurisdiction over the person of this defendant and the subject matter of this controversy.

Wherefore defendant respectfully prays that this cause be dismissed as to him and for want of jurisdiction.

Glenn O. Young, Attorney for Defendant.

[fol. 55] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SPECIAL APPEARANCE AND MOTION TO DISMISS OF J. R. SOUTHARD, JR.—Filed September 3, 1938

Comes now the defendant J. R. Southard, Jr. and appearing specially and for the purpose of this motion only, respectfully shows to the court that process was not issued, served and returned herein as required by law and that this honorable court is without jurisdiction over the person of this defendant and the subject matter of this controversy.

Wherefore defendant respectfully prays that this cause be dismissed as to him and for want of jurisdiction.

Glenn O. Young, Attorney for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SPECIAL APPEARANCE AND MOTION TO DISMISS OF NELL SOUTHARD—Filed September 3, 1938

Comes now the defendant Nell Southard and appearing specially and for the purpose of this motion only, respectfully shows to the court that process was not issued, served and returned herein as required by law and that this honorable court is without jurisdiction over the person of this defendant and the subject matter of this controversy.

Wherefore defendant respectfully prays that this cause be dismissed as to her and for want of jurisdiction.

Glenn O. Young, Attorney for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AMENDMENT TO BILL OF COMPLAINT—Filed October 24, 1938

Comes now the plaintiff and with leave of Court, having been first had and obtained to file this amendment to it's Bill of Complaint, alleges and states:

[fol. 56]

I

Plaintiff adopts all the allegations in it's Bill of Complaint, heretofore filed in said cause.

II

Plaintiff alleges that the mother of Leggette D. Kelleam was one Mary A. Kelleam who was likewise the mother of Mrs. Nell Southard and mother of E. A. Kelleam. Plaintiff further alleges the said Mary A. Kelleam died, a resident of McLain County, Oklahoma, on or about the 4th day of December 1928.

Plaintiff further alleges that the defendant E. A. Kelleam was a full brother of Leggette D. Kelleam, deceased, and Nell Southard was a full sister of the deceased, and that J. R. Southard, Jr., is the son of Nell Southard and that Joe E. Kelleam is the son of E. A. Kelleam and that the defendant herein, J. K. Perkins; Mrs. Fannie Bates; Bessie Mathews; Mrs. Elouise Culp and Glen Perkins are the children of, and the sole surviving heirs of Mary Perkins, nee Kelleam, deceased, who died prior to the death of Leggette D. Kelleam and that the said deceased Mary Perkins, nee Kelleam, was a half-sister of Leggette D. Kelleam, having a common father.

That the defendants herein, Mrs. Ethel Riddler and Mrs. Dorothy Payne are children and sole surviving heirs of J. M. Kelleam, deceased, who died in 1903 and that J. M. Killeam was a half-brother of the deceased Leggette D. Kelleam. That the defendants herein Clifford Kelleam and Kathlyn Kelleam are the children and sole surviving heirs of W. S. Kelleam, deceased, who was a half-brother of Leggette D. Kelleam and that the said W. S. Kelleam died in 1908. That the defendant herein, Leggette Hall; Marguerite Bradley (the same as Marguerite Bradley Kelleam) Lamar Hall; Mary Kate Hall (the same as M. K. Hall) and Kelleam Hall are the children and sole survivors and heirs of Mrs. Kate Hall, nee Kelleam, deceased, who died in 1918

and who was a half-sister of the deceased Leggette D. Kelleam.

That the defendant herein Dr. Fannin Kelleam, Francis Kelleam, Mrs. Jimmie Kelleam and Robert Kelleam are the children and sole surviving heirs of Dr. R. T. Kelleam, deceased, who was a half-brother of Leggette D. Kelleam and who died long prior to the death of Leggette D. Kelleam.

That Mrs. Fannie Bates and Mrs. Clyde Bates are the [fol. 57] half-sisters of the deceased Leggette D. Kelleam and that the said Mrs. Fannie Bates still lives, but that these answering defendants are informed and believe that since the death of Leggette D. Kelleam, Mrs. Clyde Bates has departed this life, but left surviving her Francis Richardson; James Russell Bates and Robert Bates her children and Joe Bates her surviving husband, who are her sole and only surviving heirs.

That Leggette D. Kelleam died a resident of Creek County, Oklahoma, on or about August 8th, 1936 unmarried.

That upon the death of the said Leggette D. Kelleam the defendant E. A. Kelleam, joined by, the defendant, Mrs. Nell Southard, filed a petition prior to August 25th 1936 in the County Court of Creek County for the appointment of E. A. Kelleam as Administrator of the estate of Leggette D. Kelleam, deceased; and that in said petition, said defendants fraudulently represented to the County Court of Creek County that they were the sole and only heirs surviving the said Leggette D. Kelleam, deceased; and that no notice of the hearing on said petition was necessary because there were no other heirs—all of which said defendants E. A. Kelleam and Mrs. Nell Southard knew was an act of such nature that a fraud was being perpetrated upon said County Court. A copy of said petition is attached to defendants cross-petition marked Exhibit "A" and is hereby referred to and made a part hereof as fully as if copied herewith.

A hearing was had upon said petition and the said defendant E. A. Kelleam was appointed Administrator of the estate of Leggette D. Kelleam, deceased; a copy of said Order is attached to defendant's cross-petition as Exhibit "B" and said exhibit is hereby referred to and made a part hereof as fully as if copied herewith. Under said Order the said E. A. Kelleam qualified as said Administrator by filing a bond, and taking the oath and upon which Letters of Administration were issued—a copy of said bonds is attached

to defendant's cross-petition, marked Exhibit "C" and said exhibit is hereby referred to and made a part hereof, the same as if copied at length herein.

Thereupon the said E. A. Kelleam after filing Letters of Administration, a copy of which is attached to defendant's cross-petition marked Exhibit "D" and said exhibit is hereby referred to and made a part hereof, filed in said cause an inventory and appraisement setting out in detail [fol. 58] the estate he received and took into his possession as such Administrator; a copy of said inventory and appraisement is attached to defendant's cross-petition as Exhibit "E" and said exhibit is hereby referred to and made a part hereof.

Plaintiff further alleges that prior to May 18th, 1937 the said defendant, E. A. Kelleam filed in said County Court his administrator's final account and petitioned for distribution; a copy of said final report is attached to defendant's cross-petition as Exhibit "I" and said exhibit is hereby referred to and made a part hereof.

Plaintiff further alleges that prior to the date of the hearing of said final account on May 18th, 1937 the defendants, Mrs. Fannie Bates, nee Kelleam and the heirs of Mrs. Clyde Bates, two of the half-sisters of the deceased, apparently found out about the death of their brother, Leggette D. Kelleam and of the administration of his estate and were about to claim a share of said estate but that on May 12th, 1937 the defendants, E. A. Kelleam and Nell Southard entered into a contract with Mrs. Fannie Bates nee Kelleam; Francis Richardson, James Russell Bates, Robert Bates, Joe Bates who were the sons of Mrs. Clyde Bates, a half-sister of Leggette D. Kelleam, deceased; a copy of which contract is attached to defendant's cross-petition as Exhibit "G" and said exhibit is hereby referred to and made a part hereof.

Plaintiff further alleges that pursuant to the said contract the defendants, E. A. Kelleam and Nell Southard prepared and filed an amendment, or a final amended account, and petition for determination of heirship and distribution of property, a copy of which is attached to defendant's cross-petition as Exhibit "H", and said exhibit is hereby referred to and made a part hereof.

And that thereafter and on the 18th day of May, 1937 the said County Court of Creek County heard said final account and purportedly made an Order covering said final account

distributing said estate to E. A. Kelleam and Nell Southard as sole heirs of Leggette D. Kelleam, deceased. Plaintiff alleges that in said amended petition for approval of the final account and decree determining heirship and distribution of the estate, the said E. A. Kelleam assisted by the said Mrs. Nell Southard, without giving notice to any of the half-brothers and sisters of the deceased Leggette D. Kelleam or heirs of the half-brothers and half-sisters of the deceased, [fol. 59] Leggette D. Kelleam perpetrated a fraud upon said County Court of Creek County by alleging that the property of which the deceased Leggette D. Kelleam died seized was an ancestral estate coming to said Leggette D. Kelleam from his mother, M. A. Kelleam who is one and the same person as Mary A. Kelleam, alleging that the said property all as shown in the administrator's inventory and appraisement had been a gift to the said Leggette D. Kelleam by the said Mary A. or M. A. Kelleam during the lifetime of the said donor, and that the said M. A. Kelleam had purchased all of the property owned by the deceased Leggette D. Kelleam at the time of his death.

Plaintiff alleges that the said M. A. Kelleam or Mary A. Kelleam—maternal ancestor of Leggette D. Kelleam and Nell Southard and E. A. Kelleam died and departed this life on or about the 4th day of December, 1928, and that in truth and effect practically all of the real-estate shown in said inventory and appraisement in the estate of E. A. Kelleam was acquired by the said E. A. Kelleam after 1928 and that particularly one bit of personalty shown on the enventory and appraisement of the estate of Leggette D. Kelleam could not possibly have been purchased by the said Mary A. Kelleam and donated or given to the said E. A. Kelleam—said personal property being a 1936 model Ford coupe—with a value of $400.00 and further that shown on said inventory and appraisement are certain promissory notes of R. J. Southard and Nell Southard one dated April 6th, 1929 in the sum of $4000.00; one dated Jan. 10th, 1931 in the sum of $1000.00; one dated September 8th 1931 in the sum of $700.00 which said promissory note could not possibly have been purchased by the said M. A. Kelleam in 1928 and given to the said Leggette D. Kelleam, deceased.

Plaintiff further alleges that no notice was mailed to any of the heirs—half brothers and sisters or children of half-brothers and sisters or heirs or half-brothers and sisters of the said Leggette D. Kelleam, deceased, as required by law,

either of the filing of the petition for the appointment of an administrator or of the hearing for approval of the administrator's final report and petition for distribution, and that the statutory notices required under the laws of the State of Oklahoma were not given. And that in all of the foregoing the said defendants E. A. Kelleam and Mrs. Nell Southard perpetrated an extraneous fraud on said County Court in procuring same and that, therefore, in truth and in fact plaintiff alleges that said half-brothers and sisters who are [fol. 60] defendants in this case are entitled to some share or portion of the estate of Leggette D. Kelleam.

Wherefore, plaintiff prays judgment as prayed for in it's Bill of Complaint filed herein, and for such other relief as this Honorable Court may in equity and good conscience deem this plaintiff entitled.

W. E. Green & J. C. Farmer, Attorneys for Plaintiff.

(Jurat omitted per stipulation.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

JOURNAL ENTRY OVERRULING SEPARATE SPECIAL APPEARANCE AND MOTION TO DISMISS OF JOE E. KELLEAM, J. R. SOUTHARD, JR., AND NELL SOUTHARD, AND SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION OF E. A. KELLEAM—Filed January 23, 1939

Now on this the 6th day of January, 1939, this cause coming on for final disposition on Special Appearance and Motion to Dismiss of Joe E. Kelleam, J. R. Southard, Jr., and Nell Southard and Special Appearance and Plea to the Jurisdiction of E. A. Kelleam, and the Court, having duly considered said motions.

[fol. 61] It Is Ordered that said motions, and each thereof, be severally overruled, to which defendants severally except and exceptions are allowed.

It is further ordered that said defendants file answer within twenty days.

F. E. Kennamer, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION TO STRIKE CROSS-PETITION—Filed January 25, 1939

Come now the defendants E. A. Kelleam, Mrs. Nell Southard, J. R. Southard, Jr. and Joe E. Kelleam, and each of them, and appearing specially and for the purpose of this motion only respectfully show to the court that defendants Mrs. Ethel Riddler, Mrs. Dorothy Payne, J. K. Perkins, Mrs. F. Bates, Glen Perkins, Bessie Mathews, Mrs. Elouise Kulp, Leggette Hall, Lamar Hall, Marguerite Bradley Kelleam, Mary Kate Hall, Kelleam Hall, Clifford Kelleam, Kathleen Kelleam, Dr. Fannin Kelleam, Francis Kelleam, Mrs. Jimmie Kelleam, and Robert Kelleam have filed in this court and in this proceeding pleading designated Cross-Petition, wherein they attempt to assert a cause of action against these defendants, and in this connection these defendants respectfully aver that this Honorable Court is without jurisdiction over the subject matter or parties involved in said denominated Cross-Petition.

Wherefore, premises considered, these defendants pray that same be stricken from the files and records herein for want of jurisdiction in the court.

Glenn O. Young, Attorney for defendants, E. A. Kelleam, Nell Southard, J. R. Southard, Jr., and Joe E. Kelleam.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SEPARATE ANSWER OF THE DEFENDANT E. A. KELLEAM—Filed January 25, 1939

Comes now the defendant, E. A. Kelleam and not waiving but expressly reserving questions of jurisdiction over the person of the defendant and the subject matter of this [fol. 62] action, heretofore raised in this cause, by order of the court, for answer to the Bill of Complaint and amendments to Bill of Complaint, presented and filed herein by the plaintiff, alleges:

1. Defendant admits that plaintiff is a corporation, duly organized and existing under the laws of the State of Mary-

land, with its principal place of business at Baltimore and further admits that it is engaged in business within the State of Oklahoma.

2. Defendant admits that at the day and date of the institution of this action he was a resident of Sells, Arizona; admits that Nell Southard and J. R. Southard, Jr. are residents of the State of Oklahoma and that Joe E. Kelleam is a resident of the State of Arizona. This answering defendant is not advised concerning the residence and citizenship of all of the other defendants but on information and belief denies that they are residents and citizens of the State of Arkansas and of the State of Oklahoma and denies that part of said defendants live in the State of Oklahoma and within the Northern District of Oklahoma, and that they may be served with process out of this court.

3. This defendant admits that in the early part of the year 1936, Leggette D. Kelleam, then a resident and citizen of Creek County, Oklahoma, died; admits that the defendant, E. A. Kelleam, was by the County Court of Creek County, Oklahoma, duly appointed as administrator of his estate and that as a condition precedent to him qualification as such administrator he was required to give an Administrator's Bond in the sum of $10,000, and admits that the plaintiff herein became surety on said bond and that said bond was duly filed in the Probate Court of Creek County, Oklahoma; admits that said bond was approved and that said E. A. Kelleam took the oath of office and fully qualified and took charge of all the assets and property of the deceased, Leggette D. Kelleam, consisting of both real and personal property. And for further answer this defendant asserts that said property was truly and correctly inventoried and appraised, conformable to the laws of the State of Oklahoma and avers that a true and correct inventory thereof was on file in said court and available to the plaintiff at the time its suit was instituted.

4. This defendant admits that the value of the property set forth in said inventory is in excess of the sum of $3000.00 but expressly denies that the controversy herein involves [fol. 63] more than $3000.00 or is in excess of the amount qualifying this court with jurisdiction.

5. Defendant admits the residence of the plaintiff and this defendant, as hereinabove set forth, but denies that this

controversy is between residents and citizens of separate and different states but on the contrary avers that whatever, if any, justiciable dispute is disclosed by plaintiff's Bill of Complaint is between residents and citizens of the same state, that is to say, the State of Oklahoma. This answering defendant further expressly denies that this action involves as between plaintiff and this defendant any property located within the Northern District of Oklahoma and expressly denies that this Honorable court has jurisdiction of the subject matter and parties to this action.

6. This defendant for further answer admits that by virtue of the authority vested in him as administrator of the estate of Leggette D. Kelleam he took charge of the property of the deceased, administered it and presented and filed in the County Court of Creek County, Oklahoma, his Final Account and Amended Final Account; that the same was heard by the County Court of Creek County, Oklahoma; that said court made an order approving said final account, determining heirship and decreeing distribution of the property remaining in the hands of this defendant and avers further that said property was distributed conformable to the terms and conditions of said decree.

7. For further answer this defendant avers that notice of the presentation and filing of said final account and petition for distribution and of said Amended Petition for Distribution was given by publication as required by the statutes of the State of Oklahoma. This answering defendant further alleges that no appeal was taken from said decree of said County Court of Creek County and that the same became final and is res judicata on all issues tendered or sought to be raised by the plaintiff in this proceeding; that said decree has at no time been vacated, modified or set aside in any manner or proceeding provided by law but that on the contrary proceedings instituted in said County Court in an attempt to vacate said decree have been decided in favor of this answering defendant and against his adversaries in said proceeding, including Mrs. Ethel Riddle, Mrs. Dorothy Payne, and others, from which said judgment [fol. 64] no appeal has been prosecuted in the time and manner provided by the statutes of the State of Oklahoma.

8. This defendant further admits that he conveyed to his son, Joe E. Kelleam; and that his codefendant, Mrs. Nell

Southard, conveyed to J. R. Southard, Jr., certain property acquired as they, and each of them, had a lawful right to do and expressly denies that said conveyances are void.

9. This defendant expressly denies that unless the property involved in this action is impounded and held intact said property will be dissipated and will not be available to satisfy any lawful claims or demands of the plaintiff, if any such it have against said property, and in this connection expressly denies that said plaintiff has any right, title, interest, equity or estate of any kind or character in and to said property whatsoever.

10. This answering defendant neither affirms or denies that in the ambiguous and uncertain contingencies set forth in paragraph five of plaintiff's Bill of Complaint "said claimed heirs will fall back on and require the plaintiff herein to pay; as surety on the bond of E. A. Kelleam, the distribute shares that may be awarded to the contesting heirs" but avers that any liability of the plaintiff against this defendant arising therefrom is so speculative, inchoate and uncertain that it cannot possibly give rise to any cause of action in favor of the plaintiff and against this defendant and in this connection asserts that plaintiff's Bill of Complaint and amendment thereto shows no present liability.

11. Defendant expressly denies that plaintiff is entitled to have property in the hands of E. A. Kelleam or Mrs. Nell Southard impounded and held intact and preserved to await the final order or judgment that may be rendered in the controversy between A. E. Kelleam and Mrs. Nell Southard upon the one hand and the plaintiff in this case upon the other hand; and further in this connection this defendant expressly denies that this Honorable Court has jurisdiction to appoint a receiver as an ancillary and supplemental remedy to an action which plaintiff's Bill of Complaint indicates is pending in the County Court of Creek County, Oklahoma.

12. This defendant further expressly denies that any property in which plaintiff has an interest, either legal or equitable, is being dissipated, wasted or lost, as alleged by [fol. 65] plaintiff save and except as the result of plaintiff's wrongful intermeddling therewith.

13. For further answer this defendant avers that the question of fact as to who are the heirs of Leggette D. Kelleam and as such entitled to inherit his property has been fully and finally settled by the County Court of Creek County, Oklahoma, said court having jurisdiction over the subject matter and the property, which said judgment has become final and binding and now constitutes conclusive evidence of the fact of heirship; that said judgment has been fully and finally executed and has not been vacated, set aside or modified in any proceeding provided by law, by virtue of which facts and circumstances the matter sought to be herein relitigated are res judicata, and further in this connection this defendant avers that this action is not being prosecuted by the real party in interest; this defendant expressly denies that the several other persons named in plaintiff's Bill of Complaint are entitled to participate in said estate.

14. This defendant further expressly denies that there was any fraud or misrepresentation incident to proceedings had in the County Court of Creek County, Oklahoma, and avers further that the identical matters sought to be herein relitigated were submitted to and finally determined by said County Court, conformable to the laws of the State of Oklahoma.

15. For further answer defendant denies each and every material allegation in plaintiff's Bill of Complaint and amendment thereto which is contrary to the allegations hereinabove set forth.

Glenn O. Young, Attorney for Defendant E. A. Kelleam.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SEPARATE ANSWER OF THE DEFENDANT JOE E. KELLEAM—Filed January 25, 1939

Comes now the defendant Joe E. Kelleam and, not waiving but expressly reserving his plea to the jurisdiction, heretofore presented and filed in this cause, by order of court presents and files answer to the Bill of Complaint and

Amendment thereto and for his answer adopts each, every [fol. 66] and all the allegations in the answer of his co-defendant, E. A. Kelleam, this date filed, as fully as though repeated verbatim herein.

Glenn O. Young, Attorney for defendant Joe E. Kelleam.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SEPARATE ANSWER OF THE DEFENDANT J. R. SOUTHARD, JR.—Filed January 25, 1939

Comes now the defendant J. R. Southard, Jr. and, not waiving but expressly reserving his plea to the jurisdiction, heretofore presented and filed in this cause, by order of court presents and files answer to the Bill of Complaint and Amendment thereto and for his answer adopts each, every and all the allegations in the answer of his co-defendant, E. A. Kelleam, this date filed, as fully as though herein repeated verbatim.

Glenn O. Young, Attorney for defendant J. R. Southard, Jr.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SEPARATE ANSWER OF THE DEFENDANT NELL SOUTHARD—Filed January 25, 1939

Comes now the defendant Nell Southard and, not waiving but expressly reserving her plea to the jurisdiction, heretofore presented and filed in this cause, by order of court presents and files answer to the Bill of Complaint and Amendment thereto and for her answer adopts each, every and all the allegations in the answer of her co-defendant, E. A. Kelleam, this date filed, as fully as though herein repeated verbatim.

Glenn O. Young, Attorney for defendant Nell Southard.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

INVENTORY—Filed May 4, 1939

Your receiver respectfully shows this Honorable Court that he has now in his possession the following described properties:

(1) Oil and gas lease covering 7/16ths of 5/8ths of the [fol. 67] working Interest in the SW¼ of the SW¼ of Section 6, Township 18 North, Range 7 East, Creek County, State of Oklahoma.

Lots 29 and 30 Block 7 College Hill Addition to the City of Oklahoma City, Oklahoma County, Oklahoma, and the houses thereon situated.

Lots 7 and 8 Block 2 Belle Verne Addition to the City of Oklahoma City, Oklahoma County, Oklahoma and the house thereon situated.

Lot 18 Block 5 Broadway Addition to the City of Drumright Creek County, Oklahoma and the house thereon situated.

Lot 11, Block 1, Drumright Addition to the City of Drumright, Creek County Oklahoma, and the house thereon situated.

Cash Received to March 1st, 1939:

Rent—Lot 18, Block 5, Broadway addition	$20.00
Lot 11 Block 1, Drumright Addition	10.00
Cash received for oil produced from SW SW Sec. 6-18-7e Creek County, state of Oklahoma	$2800.00

J. M. Scott, Receiver.

STATE OF OKLAHOMA,
County of Tulsa, ss:

J. M. Scott, of lawful age, bein- first duly sworn, upon oath deposes and says: th-t he is the receiver in the above stated inventory—that he has read said inventory and knows the facts, matters and things therein contained, and that the facts, matters and things therein set forth are true and correct, as he verily believes.

J. M. Scott.

Subscribed and sworn to before me this 4th day of May, 1939. Hettie M. Tiederman, N. P. My commission expires 2-16-1941. (Seal.)

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

JOURNAL ENTRY OVERRULING MOTION TO STRIKE CROSS-PETITION—Filed June 12, 1939

Now on this the 2nd day of June, 1939, this cause comes on for hearing on motion of the defendants, E. A. Kelleam, Mrs. Nell Southard, J. R. Southard, Jr. and Joe E. Kelleam, they appearing separately and praying that the Court hold, adjudge and decide that it is without jurisdiction over the [fol. 68] subject matter or parties involved in said denominated cross-petition and suggesting that the same be stricken for want of jurisdiction in the Court and said plaintiff appearing by W. E. Green, its attorney, said movants by Gleen O. Young, their attorney, and said co-defendants, by Heber Finch, their attorney, thereupon the Court orders that the said motion to strike for want of jurisdiction be overruled and directs that said moving defendants answer herein within ten days from this date to which said defendants except and exceptions are by the Court allowed.

F. E. Kennamer, Judge.

OK—Heber Finch, Glenn O. Young.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SEPARATE ANSWER OF DEFENDANTS, E. A. KELLEAM, MRS. NELL SOUTHARD, J. R. SOUTHARD, JR., AND JOE E. KELLEAM—Filed June 7, 1939

Comes now the defendants, E. A. Kelleam, Mrs. Nell Southard, J. R. Southard, Jr., and Joe E. Kelleam, and not waiving but expressly reserving questions of jurisdiction over the person of each of said defendants and the subject matter of this action heretofore raised in this cause, by order of the Court for answer to the cross-petition of the defendants, Mrs. Ethel Riddler, Mrs. Dorothy Payne, J. K. Perkins, Mrs. F. Bates, Glen Perkins, Bessie Mathews, Mrs. Elouise Kulp, Legette Hall, Lamar Hall, Marguerite Bradley Kelleam, Mary Kate Hall, Kelleam Hall, Clifford

Kelleam, Kathleen Kelleam, Dr. Fannin Kelleam, Francis Kelleam, Mrs. Jimmie Kelleam, and Robert Kelleam allege:

1. That this Court is without jurisdiction over the persons of these defendants or subject matter sought to be litigated in defendants' cross-petition for that there is neither diversity of citizenship nor any federal question involved in the matters set forth in said cross-petition as disclosed upon the face thereof.

2. That said matters sought to be herein litigated between said cross-petitioners and these defendants have been fully and finally adjudicated by the County Court of Creek County in a proceeding duly and regularly instituted in the County Court of said county which Court had jurisdiction over the subject matter and the parties. That said [fol. 69] judgment so entered was entered on May 18, 1937, that a true and correct copy thereof is attached to said cross-petition; that cross-petitioners herein did not except thereto or appeal therefrom in the manner and form required by the statutes of the State of Oklahoma; that thereafter defendants and cross-petitioners in said Court instituted and prosecuted to a conclusion proceedings to vacate and set aside said judgment so entered which were by said Court determined adversely to them; which said judgment constitutes a valid and binding determination of the issue herein and for said additional cause, the matters sought to be herein relitigated are res judicata.

3. For further answer to said cross-petition, these defendants and each plead that said cross-petitioners are barred by laches and limitations from the prosecution of this proceeding in this Court and they further allege that having elected and prosecuted to a conclusion a remedy available to them under the law in the County Court of Creek County, Oklahoma, they are precluded from attempting to re-litigate the identical issues in this court.

4. For further answer, these defendants, severally, aver that neither they nor anyone acting in their behalf or by their authority, committed any act alleged by said cross-petitioners which constituted or would constitute a fraud upon the Court or said cross-petitioners, but on the contrary aver that the full and true facts, as these defendants conceive

them to be and assert they are, were submitted to the County Court of Creek County, Oklahoma, and by said Court determined, finally and conclusively. Further in this connection, the defendants, severally and each for himself or herself assert that neither is now, nor at any time heretofore, has acted as agent for the other or by virtue of his authority and expressly deny that they at any time acted in collusion each with the other or with each other.

5. Defendants admit that there have been divers assignments and transfers of interest of said property but deny that the same are, in any manner fraudulent, irregular or illegal but on the contrary assert that valid title became vested by virtue thereof in the grantee in each said assignment or transfer.

6. Defendants, for further answer, deny that cross-petitioners have not an adequate remedy at law or are entitled to any relief in equity and expressly deny that this Court is [fol. 70] vested with jurisdiction or authority to appoint a receiver for the property described in said cross-petition, part of which is personalty, and realty and beyond the territorial jurisdiction of this Court.

7. For further defense, these answering defendants assert that said cross-petitioners and plaintiff herein, through their attorney, as these defendants verily believe and assert the fact to be, are acting in and have been in collusion with each other in an effort to foster litigation in this Court and to harrass and annoy these defendants by vexatious litigation, well knowing that both plaintiff herein and these answering defendants have been exonerated by two previous judgments; that there exists secret understanding between them to the effect that said cross-petitioners shall not assert a liability against the plaintiff in exchange for plaintiff's aid in promoting litigation against these defendants; further in this connection, these defendants aver that through mutual connivance, plaintiff and said cross-petitioners procured the appointment of a receiver for property of these defendants without notice to them or their attorney and thereby deprived them of the opportunity to be heard, and deprived them through said receiver, of the use of their property without due process of law and in violation of their just rights by withholding from the Court which appointed said receiver, material information which they well knew these defendants

would furnish were they properly notified. For further answer, these defendants deny each and every material allegation of said cross-petitioners which is contrary to the allegations herein contained or which purport to state grounds for a cause of action against them.

Glenn O. Young, Attorney for Defendants.

[File endorsement omitted.]

Copy served on cross petitioners and Plaintiffs this June 5, 1939—by mail to which I certify.

Glenn O. Young.

IN UNITED STATES DISTRICT COURT

AMENDMENT TO ANSWER AND PLEA IN ABATEMENT—Filed January 21, 1939

Comes now the defendants Nell Southard and R. J. Southard, Jr., and by leave of court file this their amended answer and plea in abatement.

[fol. 71] 1st. To plaintiffs' petition,

2nd. To cross-petition filed herein by certain co-defendants, and for grounds therefor respectfully show to the court that heretofore, towit, on December 7th, 1937, there was instituted in the District Court of Creek County, Oklahoma, said court being a court of general jurisdiction, a certain action wherein Ethel Riddler and Dorothy Payne were plaintiffs and the defendants herein save and except said Ethel Riddler and Dorothy Payne were defendants and wherein plaintiff herein was defendant, said cause being regularly docketed and filed as cause number 22999; that summons was duly issued in said cause and served upon certain of the parties defendant therein, that the petition in said cause reveals that said plaintiffs therein have alleged and set forth the identical cause of action and controversy attempted to be set forth herein; that in the event the County Court of Creek County, Oklahoma, has not exclusive jurisdiction of the controversy herein attempted to be litigated, then and in that event the District Court of Creek County, Oklahoma, by virtue of aforesaid proceedings acquired and now has complete jurisdiction over the subject matter of plaintiff's petition and defendants cross-petition herein, that said court is a court of general jurisdiction under the laws of the State

of Oklahoma, that said cause remains pending and undetermined in said District Court of Creek County, Oklahoma, by virtue of which facts and circumstances this court does not have jurisdiction to hear and determine the identical matter sought to be adjudicated herein; that these defendants are entitled to have this action abated and dismissed for that there is a prior action pending and said defendants Ethel Riddler and Dorothy Payne have elected a remedy and their cross-petitioning co-defendants and the plaintiff herein have acquiesced in said election.

These defendants adopt each, every and all the allegations of their original answer as though repeated herein verbatim.

Wherefore, premises considered, these defendants pray this action be abated and dismissed for want of jurisdiction in the Federal Court,

1st. Because of prior action instituted and determined in the County Court of Creek County, Oklahoma,

2nd. By virtue of action instituted and pending in the [fol. 72] District Court of Creek County, Oklahoma, as hereinbefore set forth.

Glenn O. Young, Attorney for defendants Nell Southard and R. J. Southard, Jr.

[File endorsement omitted.]

Copy served on adverse points this 21st day of June, 1939.
Glenn O. Young.

IN UNITED STATES DISTRICT COURT

REQUEST OF DEFENDANTS E. A. KELLEAM, E. A. KELLEAM, JR., NELL SOUTHARD, AND R. J. SOUTHARD, JR., FOR SPECIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed June 21, 1939.

Come now the defendants, E. A. Kelleam, E. A. Kelleam, Jr., Nell Southard and R. J. Southard, Jr., and respectfully pray that the Court make the following findings of fact:

FINDINGS OF FACT

No. 1—That on August 13, 1936, there was filed in the County Court of Creek County, Oklahoma, a Probate Proceeding designated and styled "In the Matter of the Estate

of L. D. Kelleam, deceased,'' said proceeding being instituted by the presentation and filing by the defendant, E. A. Kelleam herein, of his petition for Letters of Administration wherein he recited that L. D. Kelleam had died intestate, a resident of Creek County, Oklahoma, and wherein he prayed appointment of himself as Administrator of the Estate of L. D. Kelleam; that thereafter, there was presented and filed in said Court a Waiver, wherein the defendant Nell Southard joined in the application for Letters of Administration and agreed and consented that the prayer of the petition of E. A. Kelleam be granted.

No. 2—That E. A. Kelleam and Nell Southard were the sole brother and sister of the decedent, L. D. Kelleam, of the whole blood; that thereafter, the Court entered an order designating and appointing E. A. Kelleam the Administrator of said Estate, conditioned upon the execution and filing by him of an Administrator's Bond in the sum of Ten Thousand Dollars, ($10,000.00); that thereafter said E. A. Kelleam, as principal, and plaintiff herein, Maryland Casualty Company, a corporate surety for hire, as surety, executed and filed in said County Court, an Administrator's Bond wherein [fol. 73] and whereby said plaintiff became surety for the faithful performance of his duties by said E. A. Kelleam as Administrator; that said Bond was duly approved by the County Court and Letters of Administration issued when and whereby said E. A. Kelleam, as Administrator entered upon the discharge of the duties of his office as such.

No. 3—That thereafter said Administrator presented and filed in the County Court of Creek County his Final Account and Petition for Determination of Heirship for Distribution, and for his Discharge as Administrator; that the County Court of Creek County, Oklahoma, directed the manner and form in which hearing of said Petition for Final Distribution and Determination of Heirship should be had and notice thereof should be given, which was conformable thereto, given by publication in the manner required by the Statutes of the State of Oklahoma.

No. 4—That in his Petition for Determination of Heirship and Distribution, said E. A. Kelleam averred and asserted that he and said Nell Southard were the sole and only heirs-at-law of L. D. Kelleam, deceased. That the County Court of Creek County, upon the day and date

appointed for said hearing found, adjudged and determined said E. A. Kelleam and Nell Southard to be the sole and only heirs of L. D. Kelleam, deceased, and ordered said Estate distributed accordingly.

No. 5—That thereafter said Administrator filed and presented in the County Court of Creek County, Oklahoma, another and subsequent Petition for Distribution of Heirship and Decree of Distribution, wherein he recited that the estate of L. D. Kelleam in his hands was an ancestral estate and as such that title thereto, upon the death of said L. D. Kelleam, vested in said E. A. Kelleam and Nell Southard as representatives of said Ancestor, the mother of the deceased L. D. Kelleam, through whom, it was asserted said Estate had been acquired; that notice by publication was given pursuant to an order of the County Court of Creek County, to all persons asserting or claiming to be heirs of said L. D. Kelleam, deceased, including the Cross-Petitioners herein; that thereafter, and on the day and date appointed for said hearing, the County Court of Creek County entered its judgment, order and decree, finding and determining said Estate to be ancestral, and ordering distribution thereof to E. A. Kelleam and Nell G. South-
[fol. 74] ard, whom the count found to be the sole and only heirs of L. D. Kelleam, and entitled thereto.

No. 6—That thereafter no Appeal was prosecuted from said determination within thirty days thereafter; that said Estate was distributed by said E. A. Kelleam conformable to the determination of said Court, and said Administrator, by order or the said Court, fully and finally discharged and his bond exonerated.

No. 7—That thereafter, and after the expiration of thirty days from the entry of said last named decree of Distribution and Determination of Heirship, the cross-petitioners herein instituted and filed in the County Court of Creek County a proceeding to vacate and set aside said Decree of Distribution, and presented for the determination of the County Court of Creek County the identical issues tendered in their cross-petition presented and filed in this court; that said County Court of Creek County, after hearing said matter, entered its Decree denying the prayer of cross-petitioners' petition, from which determination said cross-petitioners prosecuted and appeal to the District

Court of Creek County, which matter remains therein undetermined.

No. 8—That the plaintiff herein was made a party to said proceedings in the County Court of Creek County to vacate said Decree, and appeared therein and participated in the trial of said action.

No. 9—That on December 7, 1937, Ethel Ridling and Dorothy Payne, the cross-petitioners, instituted and filed in the District Court of Creek County, an action wherein they were plaintiffs, the defendants, E. A. Kelleam, Nell Southard, R. J. Southard, Jr., and E. A. Kelleam, Jr., said action being regularly docketed and styled as Cause No. 22,999; that processes issued out of said court in said action; that therein said plaintiffs designated as defendants, the remaining cross-petitioners herein, and the plaintiffs herein, and presented for the determination of said court substantially the same issue as tendered in their cross-petition and as sought to be adjudicated herein; that said proceedings were instituted in the District Court of Creek County and remains pending therein undetermined.

No. 10—The Court finds as a matter of fact that at the time of the institution of this proceeding, Nell Southard, [fol. 75] R. J. Southard, Jr., were not residents within the Northern District of Oklahoma; that said R. J. Southard, Jr., asserted title to certain property by virtue of conveyances from Nell Southard; and that neither E. A. Kelleam or E. A. Kelleam, Jr., were desidents of the State of Oklahoma; that neither of said defendants last named were served with process within the Northern District of Oklahoma, and that said E. A. Kelleam was never served with process, save by constructive service by publication herein; that E. A. Kelleam Jr., asserts title to certain property, formerly part of the Estate of L. D. Kelleam, by virtue of conveyances from E. A. Kelleam; that part of the property for which a receiver was appointed herein was personal property not located within the Northern District of Oklahoma, nor in the State of Oklahoma, and that part of the real property involved herein was not located in the Northern District of Oklahoma.

No. 11—At the time of the institution of this proceeding, the plaintiff was advised of all of the facts hereinabove set forth, and notwithstanding that the appointment of a re-

ceiver was pre-emptory and without notice given or an opportunity to be heard afforded said defendants or either of them, or their attorney.

No. 12—That said Receiver was appointed and took charge of the assets and property formerly belonging to the estate of L. D. Kelleam, deceased, and deprived said defendants of their right to possession and management thereof.

CONCLUSION OF LAW

These defendants pray that the Court conclude as follows:

No. 1—That this Court has no venue or jurisdiction over the persons and subject matter sought to be herein adjudicated.

No. 2—That the Court herein has no jurisdiction to appoint a receiver for property in aid of an action pending in the County Court of Creek County, Oklahoma.

No. 3—That the jurisdiction of the County Court of Creek County, Oklahoma, to administer upon the Estate of decedent is plenary and that having assumed jurisdiction for said purpose, its jurisdiction precludes the intervention of the Federal Courts for the purpose of determining issues upon their merits, setting aside Decrees, Judgments and [fol. 76] Proceedings had in said Court or granting ancillary relief in the way of appointing a Receiver.

No. 4—That in event the County Court having obtained plenary jurisdiction over all matters sought to be herein litigated, then, and in that event, the District Court of Creek County, by institution and filing of said Cause No. 22,999, acquired a prior jurisdiction to adjudicate and determine the issues sought to be herein adjudicated by plaintiff's petition and cross-petition of certain defendants; that for said cause, defendants herein are entitled to have their plea in abatement sustained and this cause dismissed.

No. 5—That failure of E. A. Kelleam to state in his petition for distribution that cross-petitioners herein were heirs of L. D. Kelleam, deceased, contrary to his view of the facts and the law, does not, in law, amount to fraud.

No. 6—That E. A. Kelleam was, as a matter of law, entitled to be appointed Administrator of the Estate of L. D. Kelleam, deceased.

No. 7—That an erroneous determination of a question of law or fact by the County Court of Creek County, Oklahoma, does not vest the United States District Court with Jurisdiction to review, vacate or set aside a judgment of that court or to exercise probate jurisdiction to determine heirs of said decedent.

No. 8—That the identical matters sought to be herein adjudicated have heretofore been determined by the County Court of Creek County, Oklahoma, and that this court is without jurisdiction to vacate or set aside said determination.

No. 9—That after judgment in its favor in the County Court of Creek County, Oklahoma, and after having been, by order of said court, released and relieved from liability upon its bond, the Federal Court may not, at the instance of the surety, appoint a Receiver while said proceedings are pending on appeal upon the assumption that the judgments and orders of the County Court of Creek County are erroneous, and void, and set aside upon appeal, the presumption being that judgments of inferior courts are regular and in conformity of law.

No. 10—That the object and purpose of proceedings instituted in the County Court of Creek County was to exonerate the bond, insofar as plaintiff is concerned, that that object [fol. 77] having been accomplished by the favorable decision of the County Court, said surety has no lawful right or authority to obtain and procure the appointment of a receiver in an independent action instituted in the Federal Court for that purpose upon the assumption that the order exonerating it was erroneous; that if plaintiff conceives itself to be obligated to any parties to this proceeding, it should discharge its obligation and thereafter seek redress by subrogation or otherwise, if any it has; that it will not be entitled to the harsh remedy of a receiver, upon the assumption that it may be liable, the while denying its liability.

No. 11—That the receiver herein having been appointed without notice, and over property beyond the jurisdiction of this court, and in a proceeding wherein plaintiff knew defendants, E. A. Kelleam, E. A. Kelleam, Jr., Nell Southard, and R. J. Southard, were without the territorial jurisdiction of the court and could not be reached by process

lawfully issued out of this court, and with knowledge on the part of the persons procuring said receivership, of the proceedings in the County Court of Creek County, Oklahoma, and in the District Court of Creek County, Oklahoma, constituted an abuse of the processes of the Court and was erroneous and that said Receiver should be discharged at the costs of the plaintiffs; and the defendants affected by said receivership restored to all rights of every kind and character lost by virtue thereof.

Respectfully submitted, Glenn O. Young, Attorney for E. A. Kelleam, E. A. Kelleam, Jr., Nell Southard, and R. J. Southard, Jr.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

Findings of Facts and Conclusions of Law—Filed September 26, 1939

FINDINGS OF FACT

The Court makes the following Findings of Fact in the above captioned cause.

I

That Leggette D. Kelleam, a resident of Creek County, State of Oklahoma, died intestate on the 8th day of August, 1936, and that on August 13, 1936, there was filed in the [fol. 78] County Court of Creek County, Oklahoma, a probate proceeding designated and styled "In the Matter of the Estate of Leggette D. Kelleam, deceased", said proceeding being instituted by two of the defendants, E. A. Kelleam herein and Nell Southard, wherein it was prayed that E. A. Kelleam be appointed as Administrator of the estate of Leggette D. Kelleam, deceased.

The said petition alleged that E. A. Kelleam and Nell Southard were the sole and only heirs being brother and sister of the deceased, Leggette D. Kelleam. And in said petition the defendant Nell Southard joined in the petition for Letters of Administration and filed in said Court a waiver wherein she agreed and consented that the said defendant E. A. Kelleam be appointed administrator of the

estate of Leggette D. Kelleam, deceased, but the Court finds that at the time of the death of Leggette D. Kelleam, deceased, he was survived by the following who are his sole heirs at law, and who were entitled to share in the estate of Leggette D. Kelleam, and that the names and places of residence of said heirs are as follows:

Children of the deceased half sister, Mary Perkins, nee Kelleam, as follows:

1. J. K. Perkins, Milwaukee, Wisconsin.
2. Mrs. Fannie Bates, nee Perkins, Yorbalinda, California.
3. Mrs. Bess K. Mathis (Named as Mrs. Bessie Bates in the Bill of Complaint), Santa Anna, California.
4. Mrs. Eloise K. Culp (Named as Mrs. Elloise or Elouise Bates in the Bill of Complaint), Long Beach, California.
5. Glen Perkins, Yorbalinda, California.

Children of a deceased half-brother, J. M. Kelleam, as follows:

1. Mrs. Ethel Riddler, Fort Smith, Arkansas.
2. Mrs. Dorothy Payne, nee Kelleam, Galveston, Texas.

Children of a deceased half-brother, W. S. Kelleam:

1. Clifford Kelleam or Clifford R. Kelleam, Los Angeles, California.
2. Mrs. Kathleen Leiter, nee Kelleam, Los Angeles, California.

Children of Mrs. Kate Hall, nee Kelleam, deceased half-sister:

1. W. L. (Leggette) Hall, Little Rock, Arkansas.

[fol. 79] 2. Mrs. H. H. Bradley (Marguerite or Margarite Bradley, nee Hall), Alhambra, California.

3. Lamar Hall, Waldron, Arkansas.
4. Mary Kate Hall, Alhambra, California.
5. Kelleam Hall.

Mrs. Clyde Bates, nee Kelleam, half-sister, Fayetteville, Arkansas.

Mrs. Fannie Bates, nee Kelleam, half-sister, Fayetteville, Arkansas.

Mrs. Nell Southard, nee Kelleam, full sister, Blanchard, Oklahoma.

E. A. Kelleam, full brother, Sells, Arizona.

Children of Dr. R. T. Kelleam, a deceased half-brother:

1. Dr. Fannin Kelleam (F. Q. Kelleam), Amarillo, Texas.
2. Francis Kelleam, Oklahoma City, Oklahoma.
3. Jimmie Kelleam, (Shown as Mrs. Jimmie Kelleam) in Bill of Complaint), Oklahoma City, Oklahoma.
4. Robert Kelleam, Texas.

The Court finds that none of the heirs of Leggette D. Kelleam, deceased, were named as heirs in the petition for the appointment of administrator, save and except E. A. Kelleam and Nell Southard, full brother and sister of the deceased. The Court further finds that knowing of the existence of other heirs the said E. A. Kelleam and Nell Southard fraudulently omitted from said petition the other heirs of the deceased Leggette D. Kelleam, and gave no notice as required by law as to the other heirs of Leggette D. Kelleam, deceased, and that the facts that there were other heirs were fraudulently concealed from the Court by E. A. Kelleam and Nell Southard, petitioners.

The Court further finds that E. A. Kelleam and Nell Southard perpetrated a fraud upon the County Court of Creek County, in that they represented in the petition for appointment of E. A. Kelleam as administrator of the estate of Leggette D. Kelleam, deceased, that E. A. Kelleam was a resident of Creek County, Oklahoma, when at that time he was and has ever since been a resident of Sells, Arizona, as shown by the amended petition for approval of final account introduced in evidence in this cause. And that [fol. 80] E. A. Kelleam failed to appoint a service agent in Oklahoma pursuant to the Oklahoma statutes.

II

The Court finds that thereafter on the 13th day of August, 1936, the County Court within and for Creek County entered an Order appointing E. A. Kelleam as administrator of the estate of Leggette D. Kelleam, deceased, upon said petition, conditioned upon his making, executing and filing an administrator's bond in the sum of $12,000.00; and, that thereafter the said E. A. Kelleam as Principal and the plaintiff herein, Maryland Casualty Company of Baltimore, Maryland, a corporation as Surety, made, executed and filed in said County Court as Administrator's bond in the sum of $12,000.00, wherein and whereby the said Maryland Casualty Company

became Surety upon said bond and wherein the bond provided as follows:

"Now if the above bounden principal shall faithfully execute the duties of said trust as aforesaid obligated, according to law, then this obligation is to be void; otherwise to remain in full force and effect."

That said bond was duly approved by the County Court of Creek County, Oklahoma, and Letters of Administration issued whereby the said E. A. Kelleam as Administrator entered upon the discharge of his duties of office as such.

III

That thereafter the said administrator E. A. Kelleam presented and filed in the Court of Creek County, Oklahoma, a joint inventory and appraisement wherein certain goods, chattels, rights, credits and real estate belonging to the said Leggette D. Kelleam, deceased, were listed, as shown by the inventory introduced in evidence in this cause and to which reference is made, and also, while the said E. A. Kelleam was administrator of the estate of Leggette D. Kelleam, he received certain cash items and other personal property as shown by his final report filed in the estate of Leggette D. Kelleam, deceased, which final report is in evidence in this cause and to which reference is made. The Court also finds that certain of the assets are in the possession and under the control of a receiver appointed herein as shown by the inventory of J. M. Scott, receiver appointed by this Court in the above captioned cause.

[fol. 81]

IV

That thereafter the said administrator presented and filed in the County Court of Creek County, Oklahoma, his final account and petition for determination of heirship for distribution and for his discharge as administrator wherein the real estate and personalty and assets listed in said inventory, together with funds received subsequent to his appointment as receiver were likewise listed. And in said petition for determination of heirship and distribution the said E. A. Kelleam asserted that he and Nell Southard were sole heirs of Leggette D. Kelleam, deceased, being brother and sister respectively, and he prayed that the balance of said estate, after debts of decedent were paid,

including all property, real and personal therein, be distributed between him and the said Nell Southard.

V

That thereafter the said Administrator filed in said County Court of Creek County in said cause and amended petition for approval of said final account and to have decreed the determination of heirship and distribution of said estate wherein the said E. A. Kelleam and Nell Southard fraudulently and falsely stated and represented to the County Court of Creek County, Oklahoma, that the said E. A. Kelleam and Nell Southard were the sole and only heirs of Leggette D. Kelleam, deceased, being brother and sister respectively of said decedent; and asserting that, however, when Leggette D. Kelleam departed this life he left surviving him the following brothers and sisters of the half blood; they being paternal half brothers and sisters, together with the following children of the paternal half-brother- and sisters, to-wit:

(1) Mrs. Clyde Bates nee Kelleam, half-sister.

(2) Mrs. Fannie Bates nee Kelleam, half-sister.

(3) Mary Perkins, nee Kelleam, deceased, was a half-sister who died in the year of 1932 leaving surviving her the following children, who survive: J. K. Perkins, Glen Perkins, Mrs. Fannie Bates, Bessie Mathews and Mrs. Eloise (Elouise) Culp.

(4) J. M. Kelleam was a half-brother of the deceased and died about 1903 leaving surviving him the following children who still survive: Mrs. Ethel Riddler and Mrs. Dorothy Kelleam Payne.

[fol. 82] (5) W. S. Kelleam was a half-brother of the deceased who died in the year 1908 leaving surviving him the following children who still survive: Clifford Kelleam and Kathleen Kelleam.

(6) Mrs. Katherine Hall was a half-sister of the deceased. She died in the year 1918 leaving surviving her the following children who still survive: W. L. Hall, Lamar Hall, Marguerite Bradley nee Hall, Kelleam Hall, Mary Kate Hall.

(7) R. T. Kelleam was a half-brother of the deceased who died at a date unknown to the said petitioners in said

amended petition but prior to the death of the deceased L. D. Kelleam, and the said R. T. Kelleam left surviving him the following children who now survive: F. Q. (Dr. Fannie) Kelleam, Francis Kelleam, Robert Kelleam and Jimmie Kelleam, a girl.

VI

That in said amended petition the said E. A. Kelleam and Nell Southard fraudulently represented that all of the property owned by the said Leggette D. Kelleam at the time of his death was an ancestral estate coming to him from his mother, one Mary Ayers Kelleam, and in said petition the said E. A. Kelleam and Nell Southard fraudulently and falsely represented to the Court that all property owned by the deceased, Leggette D. Kelleam, was purchased for him by the mother of the deceased during her lifetime and as an advancement to the said Leggette D. Kelleam in lieu of a portion of his share of her estate.

VII

The Court further finds that the representations in the amended petition were fraudulent in that the greater portion of the assets of the deceased, Leggette D. Kelleam, were acquired by the said Leggette D. Kelleam after the death of his mother and that she died in 1928.

The Court further finds that the defendants E. A. Kelleam and Nell Southard, as a part and parcel of their plan to defraud the half blood heirs of Leggette D. Kelleam, deceased, consummated a settlement with Mrs. Fannie Bates, nee Kelleam, surviving paternal half sister of Leggette D. Kelleam, deceased, and Francis Richardson, James Russell Bates and Robert Bates, children of Mrs. Klyde Bates, nee Kelleam, deceased, and Joe Bates, the surviving husband of Mrs. Klyde Bates, nee Kelleam, deceased, the said Mrs. [fol. 83] Klyde Bates, nee Kelleam, being a paternal half-sister of Leggette D. Kelleam, deceased. That in said settlement Mrs. Fannie Bates, and the heirs of Mrs. Klyde Bates received the sum of $4,000.00 in cash in exchange for their agreement not to appear in the County Court of Creek County until said decree became final, and for their agreement to refrain from contesting any order or decree of distribution granting all of the estate of Leggette D. Kel-

leam, deceased, to E. A. Kelleam and Nell Southard, all of which agreement appears in evidence in this cause.

VIII

The Court further finds that said amended petition for approval of the final account, determination of heirship, and distribution of the estate was set for hearing without any notice being given to any of the half-brothers and half sisters, heirs of Leggette D. Kelleam, and that the only attempted notice was a notice by publication, and that thereafter on the day and date appointed for said hearing, the County Court entered its judgment order and decreeing, finding and determining that said estate of Leggette D. Kelleam, deceased, was an ancestral estate and ordering distribution thereof to the E. A. Kelleam and Nell Southard whom the Court, upon said fraudulent representations, found to be the sole and only heirs of Leggette D. Kelleam and excluded from inheritance all of the half-sisters and descendents of the deceased half-brothers and sisters for the reason that the property of which the said Leggette D. Kelleam died seized was a maternal ancestral estate.

The Court finds said order was procured by fraud and was contrary to the laws of descent and distribution, and was void and invalid as to said half blood heirs.

The Court finds that thereafter, more than thirty days from the entry of the Decree of Distribution, the defendants and cross-petitioners herein instituted and filed in the County Court of Creek County a proceeding to vacate and set aside said Decree of Distribution and that the County Court of Creek County entered its decree, denying the petition of the defendants and cross-petitioners to vacate said final decree and that from said Order denying the petition of defendants and cross-petitioners, said defendants and cross-petitioners prosecuted an appeal to the District Court of Creek County, Oklahoma, where said appeal is now pending.

[fol. 84] IX

The Court finds further that after the decree of the County Court of Creek County was rendered, the defendant E. A. Kelleam undertook to and did make a purported conveyance to his son Joe Kelleam, one of the defendants herein, of a portion of said property and that the defendant

Nell Southard attempted to and did make a purported conveyance of the real property which she had purportedly received in said Decree of Distribution to her son, J. R. Southard, Jr. That these conveyances were not attempted to be made until after the defendants and cross-petitioners herein had filed their petition to vacate said final decree of distribution, and that said conveyances were made without consideration and were fraudulently made with full knowledge of grantors and grantees of the right of the defendants and cross-petitioners and that said conveyances are, therefore, void.

X

The Court further finds that the said E. A. Kelleam and Nell Southard were attempting to divest themselves of any share they had received from the estate of Leggette D. Kelleam, deceased, in order that the defendants and cross-petitioners herein could not recover any right, title or interest which said defendants and cross-petitioners might have in said property so distributed.

XI

The Court finds that the remaining assets of the estate of Leggette D. Kelleam now in the hands of E. A. Kelleam and Nell Southard are in danger of being dissipated and will not be available to satisfy any judgment, order or decree awarding said property to the defendants and cross-petitioners; and, that therefore, the plaintiff Maryland Casualty Company of Baltimore, Maryland, Surety on the Administrator's bond of E. A. Kelleam will become liable to said defendants and cross-petitioners for the failure of E. A. Kelleam, Administrator to perform his duties as such Administrator as required by law. That, therefore, the said plaintiff herein is entitled to have the property of Leggette D. Kelleam, deceased, now in the hands of E. A. Kelleam, Nell Southard, Joe E. Kelleam, and J. R. Southard, Jr., held intact and preserved to await the final order of judgment on an accounting between the defendants E. A. Kelleam and Nell Southard, Joe E. Kelleam, and J. R. [fol. 85] Southard, Jr., upon the one hand and the defendants and cross-petitioners in this action upon the other, which said property is now in the possession and under the control of J. M. Scott, receiver appointed in the above captioned cause.

XII

The Court further finds that the value of the property in controversy is in excess of the sum of $3,000.00.

XIII

The Court further finds that there is diversity of citizenship between the plaintiff, Maryland Casualty Company of Baltimore, Maryland, and the defendants, and defendants and cross-petitioners herein, and that this Court has jurisdiction of the parties and the subject matter in this action.

F. E. Kennamer, Judge.

CONCLUSIONS OF LAW

I

An administrator of an estate who fraudulently procures an order of the county court wherein the estate is pending, distributing the assets of the estate to himself, a full brother of the deceased, and to a full sister of the deceased, fraudulently concealing from the court the existence of half-sisters and children of deceased half-brothers and sisters to whom no notice was given of the petition for appointment of the full brother as administrator or any other notice, renders himself and the sureties on his administrator's bond liable to such half-sisters and children of deceased half-brothers and sisters for their distributive share of the estate.

II

Kindred of the half-blood inherit equal with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestor must be excluded from such inheritance. And where the evidence and uncontradicted record shows that an order of distribution in an administration of an intestate's estate was made contrary to such rule, the decree excluding half-brother's and sister's descendants is invalid as to such [fol. 86] half-blood kin, and they are entitled to their distributive share of the decedent's estate.

III

An estate of a decedent who died intestate, which was acquired principally through investments by the deceased's intestate or was acquired by purchase from funds given the decedent by decedent's mother, after her death, is not an ancestral estate.

IV

Where one dies intestate, unmarried, without issue, leaving only a brother and sister, two half-sisters, and children of deceased half-brothers and sisters, and seized of an estate that is not an ancestral estate, said estate goes in equal shares to his brothers and sisters, half sisters, and to the children of deceased half-brothers and sisters by right of representation, and a brother and sister of the decedent who fraudulently obtain title to the estate of the deceased through an invalid decree of distribution, hold said estate in trust for the heirs of the decedent fraudulently omitted from the decree of distribution of said estate.

V

A final order of distribution of a county court distributing an estate to a brother and sister of a deceased, to the exclusion of half-sisters and children of deceased half-brothers and sisters of the decedent when the decedent's estate is not an ancestral estate is invalid, and the administrator of the estate, the brother of the deceased, is liable on his administrator's bond to the children of the half-brothers and half-sisters of the deceased for their distributive share of the decedent's estate and must account to the excluded heirs, and the surety on the administrator's bond is entitled to have what property is found in the possession of the brother and sister or in the possession of grantees to whom such property was fraudulently conveyed, held by a receiver appointed by this Court to await the result of such an accounting.

VI

This court in the exercise of its equity powers, may deprive a party of the benefit of a judgment or decree fraudulently obtained in a state court.

[fol. 87]

VII

This Court finds that as a matter of law, the conveyances attempted to be made by E. A. Kelleam and Nell Southard

of portions of the estate of Leggette D. Kelleam were fraudulent conveyances without consideration, and that the grantee had constructive knowledge that these conveyances were fraudulent and were executed in an attempt to place the estate of Leggette D. Kelleam beyond the reach of the remaining heirs of Leggette D. Kelleam, and therefore void.

VIII

The Court further finds as a matter of law that plaintiff, Maryland Casualty Company, surety on the administrator's bond of E. A. Kelleam, is entitled to relief in that the property now in the hands of the receiver in this court should be continued to be impounded, conserved and preserved and impressed with an equitable lien in favor of the Maryland Casualty Company and the defendants and cross petitioners herein, said lien covering all of said property impounded equal to a 5/9 share of all of the estate of Leggette D. Kelleam. And that said receivership should be continued until defendants E. A. Kelleam and Nell Southard account to the defendants and cross petitioners for their distributive portion of the estate of Leggette D. Kelleam, deceased.

IX

A surety on the bond of an administrator who has fraudulently distributed an estate to himself and another as full brother and sister of the intestate is entitled to be exonerated by having assets remaining in the hands of the wrongful distributees held in trust and a lien created for the defrauded heirs entitled to a distributive share in the estate who were wrongfully excluded by a fraudulently obtained decree of distribution.

X

An administrator of an estate who fraudulently distributes the decedents estate to himself and another as heirs of the decedent to the exclusion of other rightful heirs to perform his duties faithfully as such administrator and renders himself and his bondsmen liable to the defrauded heirs.

XI

A United States District Court has jurisdiction and venue [fol. 88] of an Action by a surety, a non-resident of the state where the action is commenced to obtain exoneration

on an administrator's bond executed by it where the administrator has wrongfully distributed certain property, real and personal, to himself and another, a brother and sister of a decedent, to the exclusion of other heirs. Such wrongful distribution is invalid and creates a lien in favor of the defrauded heirs that may be enforced by surety where the property sought to be subjected to the lien is within the court's jurisdiction and the parties to the action are non-residents of the district wherein the action is brought and may be constructively summoned, or are residents thereof and served personally with summons in the district or state where the action is brought.

F. E. Kennamer, Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

DECREE—Filed September 26, 1939

This cause came on for trial pursuant to regular setting June 21st 1939. Plaintiff appeared by its duly authorized representative, and by its attorneys, W. E. Green, J. C. Farmer and Robert J. Woolsey. The defendants E. A. Kelleam, Nell Southard, R. J. Southard, Jr., and Joe E. Kelleam appeared by their attorney of record, Glenn O. Young, and all other defendants and cross-petitioners appeared by Heber Finch, R. A. Young Jr., and Pliny S. Frye, their attorneys.

All parties, in open court, announced ready for trial, and the Court ordered same to proceed to trial. Plaintiff introduced its evidence and rested, and the cross-petitioning defendants introduced their evidence and rested. Whereupon the defendants E. A. Kelleam, Nell Southard, R. J. Southard Jr., and Joe E. Kelleam interposed a demurrer to the evidence and motion for directed verdict in their favor, which said demurrer and motion were taken under advisement, and the Court directed said defendants to proceed with their evidence. At which time and in open court said defendants E. A. Kelleam, Nell Southard, R. J. Southard, Jr., and Joe E. Kelleam announced that they would stand upon their demurrer and motion for judgment and offered no evidence.

Whereupon, the Court took the entire cause under advise-
[fol. 89] ment, and now on this 30th day of August 1939, upon consideration of all the evidence and briefs submitted by counsel, decrees:

The demurrer and motion for judgment of the defendants E. A. Kelleam, Nell Southard and R. J. Southard, Jr., and Joe E. Kelleam are hereby overruled and denied and exceptions allowed each of said defendants. The requested findings of fact and conclusions of law by said foregoing defendants are refused and denied and exceptions saved, the Court having made its findings of fact and conclusions of law herein.

II

It Is Further Ordered, Adjudged and Decreed that the Maryland Casualty Company, plaintiff in this action, is liable and bound to the extent of the penalty of its bond, to-wit; Twelve Thousand ($12,000.00) Dollars for the faithful performance by E. A. Kelleam of his duties as Administrator of the estate of Leggette D. Kelleam, deceased, and is entitled to exoneration from this liability by having the property in the hands of the Receiver in this action, to-wit:

Lot 18, Blk. 5, Broadway Addn., Drumright, Okla.
Lot 11, Blk. 1, Drumright Addn., Drumright, Okla.
Lot 7, Blk. 2, Belle Vern Addn., Oklahoma City, Okla.
Lot 8, Blk. 7, Belle Vern Addn., Oklahoma City, Okla.
Lot 29, Blk. 7, College Hill Addn., Oklahoma City, Okla.
Lot 30, Blk. 7, College Hill Addn., Oklahoma City, Okla.
7/16ths Inst. Sam Vance lease; SW¼ SW¼ Sec. 6-17-7 Creek County, Arkansas.
1/32 Overriding royalty interest, Sam Vance lease, SW¼ SW¼ Sec. 6-18-7 Creek County, Oklahoma,

applied to the satisfaction of the interest of the cross-petitioners herein as such interests will be hereinafter decreed, and that it have credit on its obligations to the extent of all such property so applied to the satisfaction of that interest.

III

It Is Further Ordered, Adjudged and Decreed that the determination of heirship of the County Court of Creek

County, Oklahoma finding that the property both real and personal of Leggette D. Kelleam, deceased, was ancestral is void; and it is further adjudged and decreed that the Order and decree of the County Court of Creek County, [fol. 90] Oklahoma, purporting to distribute the estate of Leggette D. Kelleam, deceased, to E. A. Kelleam and Nell Southard is invalid, and that the cross-petitioners in this action be and they are hereby decreed to be the owners of an undivided 5/9ths interest to the estate of Leggette D. Kelleam, dec., and that the interest of the cross-petitioners to the said estate are as follows;

An undivided one-ninths interest to the children of the deceased half-sister, Mary Perkins, nee Kelleam, share and share alike as follows;

1. J. K. Perkins, Milwaukee, Wis., 1/45th interest.

2. Mrs. Fannie Bates, nee Perkins, Yorbalinda, Calif., 1/45th interest.

3. Mrs. Bess K. Mathis (named Mrs. Bessie Bates in the Bill of Complaint) Santa Anna, Calif., 1/45th int.

4. Mrs. Eloise K. Culp (Named Mrs. Elloise or Elouise Bates in the Bill of Complaint), Long Beach, Calif., 1/45th interest.

5. Glen Perkins, Yorbalinda, Calif., 1/45th interest.

An undivided one-ninth interest to the children of the deceased half-brother J. M. Kelleam, share and share alike as follows;

1. Mrs. Ethel Riddler, Fort Smith, Ark., 1/18th interest.

2. Mrs. Dorothy Payne, nee Kelleam, Galveston, Texas, 1/18th interest.

An undivided one-ninth interest to the children of the deceased half-brother W. S. Kelleam, share and share alike as follows;

1. Clifford Kelleam or Clifford R. Kelleam, Los Angeles, California, 1/18 interest.

2. Mrs. Kathleen Leit, or nee Kelleam, Los Angeles, California, 1/18th interest.

An undivided one-ninth interest to the children of the deceased half-sister, Mrs. Kate Hall, nee Kelleam, share and share alike as follows;

1. W. L. (Leggette) Hall, Little Rock, Arkansas, 1/45th interest.

2. Mrs. H. H. Bradley (Marguerite or Margarite Bradley, nee Hall) Alhambra, California, 1/45th interest.

3. Lamar Hall, Waldron, Arkansas, 1/45th interest.

[fol. 91] 4. Mary Kate Hall, Alhambra, California, 1/45th interest.

5. Kelleam Hall, ——, 1/45th interest.

An undivided one-ninth interest to the children of the deceased half-brother, Dr. R. T. Kelleam, share and share alike as follows;

1. Dr. Fannin Kelleam (F. Q. Kelleam) Amarillo, Texas, 1/36th interest.

2. Francis Kelleam, Oklahoma City, Oklahoma, 1/36th interest.

3. Jimmie Kelleam (Shown as Mrs. Jimmie Kelleam in the Bill of Complaint), Oklahoma City, Oklahoma, 1/36th interest.

4. Robert Kelleam, ——, Texas, 1/36th interest.

and that the said cross-petitioners are decreed to have a lien upon all property above described in the hands of the Receiver herein to satisfy their interest therein.

IV

It Is Further Ordered, Adjudged and Decreed that the defendants E. A. Kelleam and Nell Southard obtainee the purported decree of distribution and determination of heirship from the County of Creek County, Oklahoma, through fraud and misrepresentation and that E. A. Kelleam, Administrator, failed to faithfully perform his duties as Administrator of the estate of Leggette D. Kelleam, dec., as required by the statutes of the State of Oklahoma.

V

It Is Further Ordered, Adjudged and Decreed that the defendants E. A. Kelleam and Nell Southard be and they are hereby ordered and directed to account to the cross-petitioners and deliver over to the said cross-petitioners an undivided five-ninths (5/9ths) of the estate of Leggette D. Kelleam, deceased, and that the cross-petitioners herein be decreed to and have a lien upon all the property in the hands of the Receiver herein to satisfy that judgment, and upon failure of said defendants E. A. Kelleam and Nell Southard, to account therefor and pay over to the cross-petitioners said sums or deliver said properties as may be due within 90 days that the lien so created on the property in the hands of the Receiver be foreclosed and said Receiver to sell same under the Order and direction of this Court to satisfy said lien.

[fol. 92]

VI

It Is Further Ordered, Adjudged and Decreed the attempted transfer of property, or any part of the property described herein by E. *E.* Kelleam and Nell Southard were fraudulently made for the purpose of concealing their ownership therein, and an attempt to prevent said property being reached by the cross-petitioning defendants herein, and that the grant*t*es in such conveyances, as a matter of law, took said property with notice of the defects therein.

VII

It Is Further Ordered, Adjudged and Decreed that plaintiff have and recover its costs herein laid out and expended.

VIII

To all of which E. A. Kelleam, as Administrator; E. A. Kelleam individually, Nell Southard, R. J. Southard, Jr., and Joe E. Kelleam and each of them object and except, and their exceptions are allowed.

(Signed) F. E. Kennamer, Judge.

Service of copy acknowledged:

W. E. Green, J. C. Farmer, Robert J. Woolsey, Attorneys for Maryland Casualty Co. Heber Finch, Attorney for Cross-Petitioners.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed November 25, 1939

Notice is hereby given that E. A. Kelleam, Nell Southard, R. J. Southard, Jr., and Joe E. Kelleam, and each of them, defendants in the foregoing action, hereby appeal to the Circuit Court of Appeals for the Tenth Circuit from the final decree entered herein and filed with the clerk September 26, 1939.

Glenn O. Young, Attorney for appellants E. A. Kelleam, Nell Southard, R. J. Southard, Jr., and Joe E. Kelleam.

[fol. 93] [File endorsement omitted.]

[Appeal bond in the sum of $250, with appellants as principals and Ophelia E. Kelleam and John M. Grady as sureties, was filed in the district court on November 25, 1939.]

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO DOCKET APPEAL—Filed December 27, 1938

Now on this 26th day of December, 1939, for good cause shown, appellants, E. A. Kelleam, Nell Southard, R. J. Southard Jr., and Joe E. Kelleam, are granted thirty days additional time, up to and including February 3, 1940, in which to prepare, file and settle the record on appeal and docket this cause in the Circuit Court of Appeals for the Tenth Circuit.

F. E. Kennamer, U. S. District Judge.

IN UNITED STATES DISTRICT COURT

Summary of the Record, Evidence and Proceedings at the Trial—Filed December 28, 1939

STATEMENT OF PROCEEDINGS

This proceeding was instituted June 8, 1938, when complainant, Maryland Casualty Company, filed its Bill of Complaint, as disclosed by the record.

Chancery Subpoena Issued and Served upon Mrs. *Mrs.* Frances E. Kelleam

On June 8, 1938, on praecipe of the plaintiff, Chancery Subpoena was issued out of the clerk's office directed to Mrs. Frances Kelleam, Tulsa, Oklahoma; upon the same date said subpoena was duly served by the U. S. Marshal for the Northern District by delivering to her personally a true copy thereof; proof of said service was returned and filed with the clerk, June 14, 1938.

On June 18, 1938, cross-petitioners filed Separate Answer and Cross-Petition, as disclosed by the record.

One June 27, 1938, an order appointing J. M. Scott receiver was entered, which is in substance as follows:

Order Appointing Receiver

This order is dated June 23, 1938, appoints J. M. Scott re- [fol. 94] ceiver on the application of plaintiff, Maryland Casualty Company. Shows all defendants except E. A. Kelleam, Nell Southard, Joe Kelleam and J. R. Southard, Jr., appeared by Heber Finch, their attorney, and joined in the application for a receiver. Specifies the following property for which receiver is appointed:

Lot 18, Block 5, Broadway Addition and Lot 11, Block 1, Drumright Addition in Drumright, Creek County, Okla.

Lots 7 and 8, Block 2, Belle Vern Addition, and Lots 29 and 30, Block 7, College Hill Addn., Oklahoma City, Oklahoma County, Okla.

Undivided 7/16ths interest and 1/32nd overriding royalty interest in Sam Vance lease (SW SW Sec. 6-18N-7E), Creek County, Okla.

Four notes signed by Nell Southard or Nell Southard and J. R. Southard, two for $700.00; one for $4,000.00, and one for $700.00 (No other data regarding the same being specified).

And any and all other assets now in the possession of or under the control of the defendants E. A. or Joe Kelleam or Nell or R. J. Southard, Jr., which were assets distributed by order of final distribution of the County Court of Creek County in cause No. 4354, in the Matter of the Estate of Legette D. Kelleam, entered May 18, 1937, "and all other personal property and real estate of every kind and descrip-

tion remaining in the possession or under the control of said defendants, E. A. Kelleam and Nell Southard of every kind and description whatever."

Fixed bond of receiver at $5,000.00; directed receiver upon filing bond to proceed to take possession of said property, both real and personal, to operate said property as the same is now operated, employ and pay laborers, servants, agents, attorneys, purchase and pay for material and supplies needed, to prosecute and defend without further order of court any and all actions brought against said property or himself as receiver by the permission of this court; to execute necessary conveyances, division and transfer orders, assignment of oil and gas leases or any interest therein, collect rents, bonuses, dividends, royalties, rents, etc., derived from said properties, and to do whatever else may be need-
[fol. 95] ful and proper to maintain and preserve said property until the further order of this Court; to inventory and keep accounts, etc.

(Signed) F. E. Kennamer, Judge.

Filed: June 27, 1938.

Oath and bond of receiver were duly executed and filed June 27, 1938, and the receiver entered upon the discharge of his duties.

On the same date W. E. Green and J. C. Farmer were appointed attorneys for the receiver.

Chancery Subpoena Issued and Served Upon Nell Southard and J. R. Southard, Jr., both of Blanchard, Oklahoma

July 22, 1938, on praecipe of the plaintiff, Chancery Subpoena was issued out of the Clerk's office directed to Nell Southard and J. R. Southard, Jr., both of Blanchard, Okla., upon July 27, 1938 the same was served upon said defendants personally by the U. S. Marshal for the Eastern District of Oklahoma, and On Aug. 13, 1938, the return of service in due form was filed with the clerk.

On July 25, 1938, motion of plaintiff for order of service on defendants A. E. Kelleam and Joe E. Kelleam outside of the district was filed, as shown by the record.

An order, as shown by the record, was issued and served upon E. A. Kelleam and Joe Kelleam personally in the State of Arizona on August 23 and August 9, 1938, respectively.

No Publication Service

No service by publication on unknown heirs or claimants or non-residents or other constructive service was ever had or obtained.

On Sept. 3, 1938, defendants filed separate special appearances and motions to dismiss, which were overruled Jan. 6, 1939.

Defendants filed separate answer to the petitioner's bill on Jan. 25, 1939, and motion to strike cross-petition on the same date.

On May 4, 1939, the receiver filed an inventory, which appears in the record.

On June 2, 1939, motion to strike cross-petition was overruled.

[fol. 96] And on June 7, 1939, defendants filed separate answer to the cross-petition.

On June 21, 1939, the foregoing cause came on for hearing before the Honorable F. E. Kennamer, U. S. District Judge for the Northern District of Oklahoma, at Tulsa. The complainant, Maryland Casualty Company, appeared by Green & Farmer, its attorneys; the defendants E. A. Kelleam, Nell Southard, Joe E. Kelleam, and R. J. Southard, Jr., hereinafter referred to as the answering defendants, appeared specially by Glenn O. Young, of Sapulpa, Oklahoma, their attorney, and the cross-petitioning defendants, who will hereinafter be referred to as such, appeared by Feber Finch, of Sapulpa, Oklahoma, and R. A. Young, of Ft. Smith, Arkansas, their attorneys.

The Court: "I assume the burden of proof is on the Maryland Casualty Company?"

Mr. Green: "Yes, your Honor, I think we have to prove some of the allegations. Most of them are admitted, however, in the answer."

The Court: "All right."

Lee Snider, witness for the complainant, testified:

I am the Court Clerk of Creek County, Oklahoma and have charge of the court records in the estate of Legette D. Kelleam, deceased.

The Court: "Can't you gentlemen stipulate as to these records, what they are?

Mr. Glenn O. Young: I don't think there is any dispute as to the records.

Thereupon the answering defendants, appearing specially, object to introduction of any evidence on the ground that the court is without jurisdiction or venue of the cause of action, or the parties and the plaintiff's petition fails to state facts sufficient to constitute a cause of action.

The Court: "I will overrule the objection and allow an exception."

The following instruments, having been duly identified, were admitted in evidence: Petition for Letters of Administration, Order Appointing Administrator, Administrator's [fol. 97] Bond, Letters of Administration, Inventory and Appraisement, Final Account and Amended Final Account of Administrator, Order Approving Administrator's Final Account, Determining Heirship, and providing for distribution, all of which are attached to the Separate Answer and Cross-Petition of Mrs. Ethel Riddler and are a part of the record, which counsel admit were properly signed.

Petitioner further offered in evidence application of Mrs. Ethel Riddler, et al., to reopen the estate and to be declared heirs, a substantial copy of which is hereto attached and marked Exhibit 1 and an Amended Petition or application to reopen the estate and to be declared heirs, a substantial copy of which is hereto attached and marked Exhibit 2.

Mr. Glenn O. Young: "Mr. Green, may I inquire whether you offered in evidence the publication service that was had in the County Court."

Mr. Green: "No, I am not offering it. * * * Don't think it necessary to my prima facie case. * * * I don't deny there were notices issued."

The Court: "I will just let that be introduced as a part of your cross-examination of this witness, the publication notices."

Thereupon the following exhibits were presented in evidence:

EXHIBIT

1. Notice to creditors, issued out of the County Court of Creek County, to present claims, dated August 25, 1936, with

proof of publication showing the same published and posted as required by the statutes of the State of Oklahoma.

EXHIBIT

2. Notice of Settlement of Final Account and for Decree Determining Heirship and for Distribution, with proof of legal publication in The Democrat News, the notice with caption and endorsements omitted reading:

"The State of Oklahoma to the heirs and next kin and all persons interested in the estate of Legette W. Kelleam:

You, and each of you, will take notice that E. A. Kelleam, administrator of the estate of Legette D. Kelleam, has presented and filed in the County Court of Creek County, Oklahoma, his final account as such administrator, [fol. 98] together with his petition for the approval thereof, and for a decree determining heirship, and for an order of distribution pursuant thereto; that said matters have been set for hearing in the County Court room at the court house in Sapulpa, Creek County, Oklahoma, on the 25 day of March, 1937, at the hour of ten o'clock a. m. at which time and place all persons having or claiming an interest in said estate are notified to appear and show cause, if any they have, why said final account should not be approved and a decree determining heirship and for distribution entered conformable to the prayer of said petition.

Dated this the 3rd day of March, 1937.

George D. Willhite, County Judge." (Seal.)

EXHIBIT

3. Notice of Hearing of Final Account and for Distribution and Discharge upon Amended Petition, with proof of legal publication in the Sapulpa Herald, as follows (proof of Publication, not being denied, is omitted):

"Published in Sapulpa Herald April 29, May 6, 13, 1937.

In the County Court of Creek County, State of Oklahoma.

In the matter of the estate of Legette D. Kelleam, deceased. No. 4354.

Notice of Hearing of Final Account and for Distribution and Discharge, and upon Amended Petition for Approval of Final Account and for Distribution of Estate.

Notice is hereby given that E. A. Kelleam, administrator of the estate of Legette D. Kelleam, deceased, having filed

in this court his final account of the administration of said estate and motion for distribution of said estate and for final discharge of said administrator, and his amended petition for approval of final account and for distribution, the hearing on all of the same has been fixed by the judge of said court for the 18th day of May, 1937, at the hour of 10:00 o'clock a. m., at the court room of said court in the county courthouse at Sapulpa, in the county and state aforesaid, and all persons interested in said estate, including Nell Southard, nee Kelleam, Mrs. Klyde Bates, nee Kelleam, Mrs. Fannie Bates, nee Kelleam, J. K. Perkins, Mrs. Fannie Bates, Glenn Perkins, Bessie Matthews, Mrs. Elouise Culp, Mrs. Ethel Riddler, Mrs. Dorothy Kelleam Payne, [fol. 99] Clifford Kelleam, Kathleen Kelleam, Legette Hall, Lamar Hall, Marguerite Bradley, nee Hall, Kelleam Hall, Mary Kate Hall, F. Q. Kelleam, Francis Kelleam, Robert Kelleam, Jim Kelleam are notified then and there to appear and show cause, if any they have, why the said account should not be settled and allowed, and said estate distributed and the administrator discharged.

Dated this 29th day of April, 1937.

George D. Willhite, County Judge." (Seal.)

Complainant then offered in evidence the following:

EXHIBIT

Instrument No. 20745, from Home Bldg. & Loan Assn. to L. D. Kelleam, recorded in Book 274, at page 515 of the deed records of Creek County, Oklahoma, dated Oct. 29, 1932, conveying Lot 18, Block 5, Broadway Addn. to Drumright, said deed being in due form.

EXHIBIT

Instrument No. 23906, being a Quit Claim Deed from E. T. Finley to L. D. Kelleam, dated Oct. 21, 1935, recorded in Book 402 at page 41 of the deed records of Creek County, Okla., duly executed and conveying Lot 11 in Block 1, in Drumright Addition to the town of Drumright, and now in Drumright's Amended Addition to the City of Drumright.

EXHIBIT

Instrument No. 32352, a Warranty Deed from Nell K. Southard and R. J. Southard, her husband, to Maud Grady,

duly executed and dated Oct. 21, 1937, recorded in Book 448 at page 28 of the deed records of Creek County, Okla., conveying an undivided one-half interest in and to Lot 18, Block 5, Broadway Addition to Drumright, and Lot 11, Block 1, Drumright Addition to Drumright.

EXHIBIT

Instrument No. 32183, a Warranty Deed from E. A. Kelleam to Ophelia E. Kelleam, recorded in Book 448 at page 6 of the deed records of Creek County, Okla., dated Oct. 13, 1937, duly executed and conveying an undivided one-half interest in and to Lot 18, Block 5, Broadway Addition to Drumright, and Lot 11, Block 1, Drumright Addition to Drumright.

Defendants objected to the introduction of the last two deeds upon the ground that Ophelia Kelleam and Maud [fol. 100] Grady were not parties defendant; that title to property conveyed to them could not be adjudicated in the pending action, therefore, the deeds were immaterial. Complainant stated that the only purpose was to show they were trying to dispose of this property and get it away, out of their possession; and these deeds will show that was done after the application to reopen the estate on the grounds of fraud, that was the only purpose. Objection was overruled and exception saved.

Mr. Glenn O. Young then inquired whether the record might show in waiving identity of proof defendants did not in any manner waive any other defenses.

The Court: "All right."

Cross-Petitioners then offered in evidence certified transcripts of Probate proceedings in the County Court of McClain County showing that Mary A. Kelleam, mother of L. D. Kelleam, died intestate, a resident of McClain County, Oklahoma, on Dec. 4, 1928; that L. D. Kelleam was by said court duly appointed administrator of her estate by consent of Nell Southard and E. A. Kelleam; that he duly qualified, gave notice to creditors, and otherwise properly administered said estate; that decedents's estate at death consisted of Lots 8, 9, 10, 11 and 12, Block 21 of the town of Blanchard, title to which by final decree of the court, entered

Sept. 2, 1929, became vested in L. D. Kelleam, E. A. Kelleam and Nell Southard in equal shares.

Defendants as part of the cross-examination of the witness offered in evidence "Order of Final Discharge and Releasing Administrator and Bond from Further Liability" entered in the County Court of Creek County which reads:

EXHIBIT

"Order of Final Discharge and Releasing Administrator and Bond from Further Liability

Now on this the 13 day of August, 1937, this cause coming on for final distribution and thereupon appears E. A. Kelleam, administrator of the estate of Legette D. Kelleam, deceased, and presents to the court evidence showing payment of inheritance and transfer taxes in this estate in the sum of $360.63, as fixed and determined by the Oklahoma Tax Commission, together with certificates duly executed by said Tax Commission, certifying to the fact of said payment and releasing and discharging the property of said [fol. 101] decedent Legette D. Kelleam from any and all liens by virtue of estate and inheritance taxes and thereupon said administrator further presents and shows to the court receipts showing distribution conformable to the order of the court of all property in his hands to the heirs lawfully entitled to participate in said distribution, as found and determined by the order, judgment, and decree of this court heretofore entered in this cause, and it appearing to the court that E. A. Kelleam has duly and regularly, and conformable to law, fully performed and discharged all duties and obligations imposed upon him by the laws of the State of Oklahoma, and has fully and faithfully accounted for all moneys and property coming into his hands and has distributed the same conformable to the orders, judgments, and decrees of this court and that there is no longer occasion for the continuance of his services as administrator of the said estate and he is entitled to be fully and finally discharged herein and to have his bond released from all other and further liability.

It Is, Therefore, the Order, Judgment and Decree of the Court that the said E. A. Kelleam, administrator of the

estate of Legette D. Kelleam, be and he is hereby finally discharged as administrator of the estate of Legette D. Kelleam and he and his bond are hereby released and discharged from all other and further liability by virtue of the appointment of said E. A. Kelleam as administrator of the estate of Legette D. Kelleam and it is the further order of the court that this cause be and the same is hereby terminated and closed.

(Signed) George D. Willhite, County Judge."

Defendants offered in evidence Petition and Amended Petition to Reopen Cause, filed in the County Court by the cross-petitioners. (This is the same as plaintiff's Exhibit No. 1 & 2, supra.) The citation issued to E. A. Kelleam and Mrs. Nell Southard; a "Special Appearance and Motion to Quash of Maryland Casualty Company," filed in the County Court on Nov. 16, 1937, in the same cause, wherein the Maryland Casualty Company alleged in substance: "That the alleged and denominated petition to reopen and the service purported to have been had thereon, is wholly insufficient to clothe this court with any jurisdic- [fol. 102] tion over this movant * * *." A "Special Appearance and Motion to Quash by E. A. Kelleam," filed therein Jan. 3, 1938; an Order overruling motion of E. A. Kelleam and Nell Southard to quash, entered in the County Court Aug. 24, 1938; a demurrer of E. A. Kelleam and Nell Southard, filed Aug. 25, 1938, in said cause, and an order of dismissal therein, which, omitting caption and endorsements, reads:

Exhibit

"Journal Entry of Judgment

Now on this the 15 day of September, 1938, this cause coming on for hearing in due course on the demurrer of E. A. Kelleam and Nell Southard, and said demurrants appearing by Glenn O. Young and A. L. O'Bannen, their attorneys, and petitioners herein appearing by Heber Finch, their attorney, and the court, having heard argument of counsel and having considered said demurrer, and being duly advised in the premises, finds that said demurrer is well taken and should be sustained.

It Is, Therefore, the Order, Judgment, and Decree of the Court that the demurrer of E. A. Kelleam and Nell Southard be and the same is hereby sustained and this proceeding dismissed. To which action of the court petitioners, by Heber Finch, their attorney, in open court give notice of their intention to appeal.

(Signed) George D. Willhite, County Judge.
(Seal.)"

A statutory Notice of Appeal and Bond, showing cross-petitioners duly appealed to the District Court of Creek County from the order entered, was also offered in evidence by defendants.

Defendants further tendered in evidence copies of pleadings filed by part of the cross-petitioners in another and different proceeding in the District Court of Creek County.

The Court. "What was that case about?"

Mr. Young: "That is this same case that was filed in the District Court of Creek County before this suit was instituted and which is still pending there."

The Court: "Who filed this suit down there?"

Mr. Young: "Those same defendants."

[fol. 103] Mr. Green: "No, the cross-petitioners in this case filed an original action down there, and at this time we object to the introduction of this case. It does not tend to prove or disprove any issue in this case."

The Court: "I will let it go in the record. I don't think it is either."

The record in this cause not being material to any issue involved in this appeal is not abstracted.

P. A. Sellers, for the complainant, testified: That he lived in Drumright, Oklahoma, where he was cashier of the Citizens Bank. He identified the stipulation between E. A. Kelleam and Nell Southard and Mrs. Fannie Bates, et al., which was introduced in evidence (Copy is annexed to cross-petition.) The witness testified this instrument was brought to the bank and left with an escrow deposit of $4,000.00. The witness identified the signatures to the stipulation.

The Court: "What do you want with this contract, what purpose?"

Mr. Green: "The purpose is to show the probable right of these petitioning cross-petitioners in this case to recover * * * showing the possible danger of our loss on this bond."

Mr. Glenn O. Young: "We object * * * the ground * * * It is incompetent, irrelevant and immaterial. If it does anything it exonerates them on the bond. That is what they say they want."

The Court: "I will let the contract be introduced in evidence." (Exception was saved.) This contract appears as an exhibit to the cross-petition in the record at p. 39.

The witness further testified over objection that about thirty days after the deposit of the $4,000.00 and on June 18 Luster Cook and he made one cashier's check or draft to these people at Little Rock and then one to Cook for $500.00; "that disbursed the $4,000.00." The money "went to the second parties in the contract and not to Dr. Kelleam or Mrs. Southard."

Mr. Finch: "Your Honor, the cross-petitioners desire this to be considered a part of their evidence."

[fol. 104] The Court: "I understand you adopt all of the petitioner's testimony unless it is otherwise noted."

Mr. Young: "We would like an objection then to any testimony in behalf of the alleged cross-petitioners in this case upon the ground and for the reason that the cross-petition fails to set forth a cause of action over which this court has jurisdiction, or venue, and upon the further ground that there is a prior action pending in the County Court of Creek County, Oklahoma, and in the District Court of Creek County, instituted by th-se same cross-petitioners, which is still pending." The objection was overruled and exception allowed.

Luster Cook, for the complainant, testified: I am not personally acquainted with E. A. Kelleam but saw him in the court room one day. I know of the estate of Leggette D. Kelleam. I was local counsel for Pearson & Pearson, a firm of attorneys at Fayetteville. We represented the same clients, who were parties to the settlement contract introduced in evidence in this case. I had something to do with negotiating that contract and received on behalf of my

clients the sum of $4,000.00 from the Citizens State Bank of Drumright, which I presumed was put up in escrow under the contract.

J. C. THOMAS, for complainant, testified: (In substance) I am claim manager for the Maryland Casualty Company, living in Tulsa. My duties are to investigate claims for this district. I received and made investigation of a claim reported to me under the bond of E. A. Kelleam as administrator of the Estate of Leggette D. Kelleam. I wrote to Dr. Kelleam on several occasions while he was in Sells, Arizona, and afterwards saw him personally. I don't recall the exact date, but it was shortly after this action was first started. That is when they brought suit to reopen the case in Creek County, in the spring of 1938. I saw him at Blanchard, Oklahoma, which is the home of his sister, Mrs. Nell Southard. I discussed the attempted reopening of the estate in Creek County with him. (At this point an objection to this testimony by defendants was interposed, overruled and exception saved.) Most of our conversation was whether or not Dr. Kelleam was going to come back here and defend this law suit. As I recall the Maryland Cas- [fol. 105] ualty Company had been served with summons. I was trying to get in touch with Dr. Kelleam and get him to defend this law suit. When I saw him he assured me he would be up here or have some attorney to represent him when the case came up in Creek County, but he didn't show up. I was present at the trial. (Defendants objected upon the ground that the court record was the proper evidence as to whether he appeared at the trial, which objection the court overruled.) The witness further testified that they did not appear and they had nobody there to represent them.

Mr. Green: "Did you make any request of him at that time, Mr. Thomas, as to whether he had placed this property in a position where it could be had to answer any judgment that might be rendered against him?"

Mr. Glenn O. Young: (By permission of the Court) Interrupted to ask: "Well, what was the occasion for this discussion about his putting property in your hands?"

A. "We wanted this property conserved in event the heirs that brought this action in Creek County were able to successfully come in and reopen the case."

Mr. Young: "And you attempted to get him to turn it over to you, didn't you?

A. "Not turn it over to me, but I wanted it put some place."

Mr. Young: "You wanted it turned over to your company?"

A. "That is right."

Mr. Young: "And that was part of your proceedings, to try and negotiate settlement of the difference before this suit was filed?"

A. "That is right."

At this point defendants moved to strike this testimony because part of an effort to compromise litigation, which was overruled.

On cross-examination by Mr. Glenn O. Young, the witness testified: It was the first case that was filed in which Dr. Kelleam did not show up either in person or by attorney. I don't remember the title of it but it was the first case in which these other heirs attempted to come in, in the County Court at Sapulpa. Dr. Kelleam didn't show up.

[fol. 106] Q. "He had an attorney representing him, who won the case for him, didn't he?"

A. "No, sir."

Q. "Are you familiar with the records just introduced?"

A. "Yes, sir. * * * I remember your statement to the judge that you were not appearing for Dr. Kelleam."

Q. "I am talking about the records of that proceeding in the County Court case."

A. "Yes, sir."

Q. "Have you any reason to suppose those County Court records are not correct?"

A. "I don't know whether they are correct or not."

Q. "How many times did you appear over there?"

A. "Every time it was set, and I would judge three or four times."

Q. "I believe you appeared the second time on behalf of Dr. Kelleam."

A. "I wasn't over there when the case was tried."

Q. "State if your company was hurt in any manner by the failure of Dr. Kelleam to appear before he had been served."

A. "No."

Q. "How was your company effected or injured by his failure to appear that first time?" (Over objection by Mr. Green, which the court overruled.)

A. "In substance, as I recall, there was no attorney to represent the Maryland Casualty Company when this case was set. Now under the indemnity agreement this doctor signed when he got that bond, he agreed to hire an attorney in event there was a claim filed under that bond, and if he didn't the Maryland Casualty Company would hire one and charge it back to him. * * * I didn't try to get Dr. Kelleam to hire Mr. Green. Naturally I told him under this agreement he was to put this property where it would be impressed with a lien of the Maryland Casualty Company for the expenses of that defense. I certainly did do that.

Q. "After Dr. Kelleam had said 'I am not going to hire the Maryland Casualty Company's attorney to represent me or put my property where it will i-demnify those lawyers for their expenses,' it is true Mr. *Mr.* Green went over in the County Court and attempted to get Dr. Kelleam into court and argued, helping Mr. Finch just as he is today, in [fol. 107] an effort to get this property where it could be tied up by court process?"

Mr. Green: "Your Honor, I objected to this inference, I am helping the defendants."

The Court: "Yes."

Q. "Mr. Green did appear in the County Court?"

A. "That is right, he was representing the Maryland Casualty Company."

Q. "And was arguing the case on the side of Mr. Finch and was advancing Mr. Finch's interest after Dr. Kelleam refused to hire him?"

Objection that the question was incompetent, irrelevant and immaterial and argumentative by the court sustained as argumentative.

By Mr. Young:

Q. "You say you did attempt to get the doctor to post this property so you could hire lawyers?"

A. "That is right."

Q. "And then he refused to do it?"

A. "I don't know whether he refused or not. He didn't do that."

Q. "It is true that after in the County Court instead of defending the doctor that Mr. Green was there attempting to help these cross-petitioners impose a liability upon the doctor?"

Mr. Green: "Wait a minute, that is an improper question."

The Court: "That is argumentative."

Q. "Which side did Mr. Green argue over there?"

A. "Mr. Green represented the Maryland Casualty Company."

Q. "Was it not pointed out to the court that Mr. Green was appearing on the wrong side if he was in good faith trying to defend his principal?"

The Court: "That is argumentative."

The witness testified that he knew generally about the second suit in the District Court styled Ethel Riddler et al. v. Dr. Kelleam, and the Maryland Casualty Company but couldn't say whether that suit was filed before the one on [fol. 108] trial. The witness didn't know how long after the occurrence in Creek County it was before his company made application for the appointment of a receiver. The conference at Blanchard was shortly after the first case was filed down there, the day it was set for trial. The proposal made to Dr. Kelleam at Blanchard with respect to this property was not definite. I just suggested that he put this property where it could be on hand in event they were successful in reopening the case. I didn't have any definite proposition, any certain place he should put it. He knew what I was talking about.

Q. "You then evidently knew where you wanted to put the property. Where did you want to put it?"

A. "I didn't have anybody designated."

Q. "If you were asking a man to put his property out of his hands into somebody else's hands, you don't think it important in whose hands you are going to put it?"

A. "It didn't get that far. I just suggested to Dr. Kelleam it might be well to keep this property so if these people were successful in reopening the estate it would be available to pay it off."

Q. "At that time you knew there had been an order of the County Court made, not once but twice, ordering a distribution of this property and discharging your company on its bond, didn't you?"

A. "I recall at least one."

Q. "You knew at least one final discharge and discharge of the bond had been entered, didn't you?"

A. "Yes, sir."

Q. "Had you any reason then to suppose the County Court of Creek County did not properly adjudicate this controversy before it? * * * I mean had you any reason to suppose there was going to be an attack *make* on this decree of distribution?"

A. "Only what the attorney for one of the parties had told me, Mr. Finch. My idea in going to see Dr. Kelleam was to try to work out an arrangement where the Maryland Casualty Company would be protected in event there was a claim.

Q. "Do you at this time say that Dr. Kelleam has failed to defend himself as principal and your company as surety on the bond?"

A. "Yes, sir. I certainly will say he has."

[fol. 109] Q. "What has he failed to do that he should have done to defend himself as principal and you as surety on his bond?"

A. "In the first place I wrote a letter to Dr. Kelleam by registered mail at Sells, Arizona, asking him if he would not defend this law suit. I didn't get an answer from him. I wrote him another; I didn't get an answer either. We sent him a telegram and he wired back and says he would defend the Maryland Casualty Company; that he would be present and defend this action. Prior to time of sending the telegram I wired an attorney in Arizona to drive 450 miles to interview him * * * he failed to tell this attorney * * * he would come up and defend this action. At the beginning he did not come up and successfully defend it. Told me he would have an attorney up there and failed to do it.

On redirect examination the witness testified (over objection by defendants): (In substance) Mr. Young was the attorney of record in this estate matter for Dr. Kelleam so I went to Mr. Young to find out whether he was going to represent Dr. Kelleam. He told me he hadn't been hired

and so far as he knew he was not going to appear at the hearing. The witness testified that at the time he talked to Dr. Kelleam conveyances had been made by him and his sister, Nell Southard, in an attempt to put the corpus of this estate in their children. On question by Mr. Young the witness stated that after the witness talked to Mr. Young, Mr. Young told him Mr. Speakman had something to do with the case but that Mr. Speakman told him he did not represent Dr. Kelleam at the hearing.

STREETER SPEAKMAN, witness for the complainant, testified: (In substance) I am a regularly practicing attorney in the State of Oklahoma and before this court. I have known Dr. E. A. Kelleam about three years. I represented him as administrator of the estate of Legette D. Kelleam. I was hired to close up the estate. This was after one final account had been filed. I was thereafter employed to represent him in other proceedings. This employment began at the time the proceeding was filed in the County Court to vacate the decree of distribution and a suit filed in the District Court. I represented him for some time in that matter, then dropped out of the litigation. While I was representing him I had negotiations with a representative of the Maryland Casualty Company, Mr. Green. We dis- [fol. 110] cussed the matters three or four times between the time application to reopen the decree was filed and the time I terminated my employment. I recall a long distance telephone call from my office to Dr. Kelleam at Blanchard.

(Over objection by defendants the witness further testified): (In substance) I talked to him from my office while Mr. Green was there. I don't recall who else was present. It is difficult to recall the substance of the conversation.

Question by Mr. Young: "Were you at that time trying to adjust the difference between the bond company and your client, Dr. Kelleam?"

A. "Yes, sir."

Thereupon defendants objected that testimony of negotiations to effect a settlement was immaterial, which was overruled.

The witness further testified: I got him over the telephone and arranged for him to meet Mr. Green at Blanchard and

discuss this proposition with him. Mr. Green was threatening to bring suit in the federal court for the purpose of appointing a receiver if he didn't made satisfactory arrangements to convince the bond company he was not going to dispose of this property. I attempted to make an arrangement whereby Mr. Green was to meet him and carry on these negotiations. I advised him to meet Mr. Green for the purpose of having such negotiations, and to try to work out a contract whereby he would satisfy the company to prevent litigation. (This evidence was received over defendants' objection.)

In general I advised him to place this property where it would be preserved. Of course the details were never agreed on and worked out." (Defendants moved to strike the advice as not binding and immaterial which was overruled.) The witness then identified a carbon copy of a letter set forth herein below, written by him to Dr. Kelleam and testified that the original was sent to Dr. Kelleam. The letter was received in evidence over objection that a letter of this character couldn't possibly change the legal rights of anybody, unnecessarily encumbered the record, and was a privileged communication between attorney and client.

[fol. 111] The letter follows:

EXHIBIT

"January 13, 1938.

Dr. E. A. Kelleam, Sells, Arizona:

Mr. Green, who represents the Maryland Casualty Company, just called me by phone. He advised me that unless something is done to satisfy his company within the next few days that he will file a bill in equity in the federal court, making you and all other parties defendant, asking for a receiver to tie up this property and draw the entire litigation into federal court.

I have not looked into the matter sufficiently to advise you whether or not this can be done successfully. However, there is no power that can prevent him from filing the suit in equity in the federal court. This would entail another attorney's fee on your part for some attorney to appear and represent you in federal court. No lawyer worthy of his hire would appear for you in that case for less than $500.00 or $1,000. Therefore, I feel that you should come

back here, get Mrs. Southard and meet Mr. Green in Tulsa and see if you cannot satisfy his company by indemnifying them or making some arrangements that will satisfy them in order to prevent the filing of this litigation.

Mr. Green guarantees me that your presence in Tulsa will not be divulged so that further service may be had on you or your sister and that he will not attempt to procure service on you in any suit he may have in mind in event satisfactory arrangements cannot be had at your conference. It is my advice to you to make this trip and try to avoid this threatened litigation and expense.

The thing that has raised their suspicion and caused them to take a hostile attitude toward you is the fact that you made a transfer of this property to your son. This, of course, was made without my advice or knowledge and if you had consulted me I would have advised you in the first instance to desist from such a procedure. However, [fol. 112] this is water that has gone over the mill and you will have to deal with the situation as it now exists.

Very truly yours, Speakman & Speakman, by Streeter Speakman.

SS:MB cc—Green & Farmer, Tulsa, Oklahoma."

On cross-examination the witness testified that at the time this letter was written Dr. Kelleam in the usual course of the probate proceedings had obtained an order discharging him from liability under his bond and had fully and finally been discharged as administrator of the estate; that he *he* did not know of any irregularity in that proceeding which would effect its validity; that the witness had tried to conduct it so that it would not be irregular but in conformity with the law. At the time the letter was written there was a pleading filed to vacate the judgment entered but it hadn't been acted upon.

I am not sure whether the bond company was a party or not but they took part, appearing at the setting of the case. I don't know whether it was immediately after my first telephone conversation to Dr. Kelleam or another one that someone communicated his whereabouts to Mr. Finch and service was had upon him in the proceeding instituted in the District Court but that did occur. Immediately after the telephone conversation in which I made some arrangement with him to meet Mr. Green they appeared down there that night and

served process on him in the proceeding instituted in the District Court of Creek County. Mr. Finch was not there to learn where Dr. Kelleam was. I did not notify Mr. Finch where Dr. Kelleam was. Mr. Green, Mr. Jones, of the firm of Johnson & Jones, and I were in my office at the time I called Dr. Kelleam. So far as I know, Mr. Jones did not notify Mr. Finch where Dr. Kelleam was. We were both representing Dr. Kelleam and doing our best to represent him. In fairness to the parties, I should let Mr. Young see the answer of Dr. Kelleam to this letter.

The witness, being temporarily excused, was later recalled and testified on direct examination by Mr. Finch:

I had nothing to do with the filing of the petition for letters of administration in the original proceedings in Creek [fol. 113] County. My employment began when it was sought to determine that this property was ancestral. The regular statutory notice was given. I think by publication only. I gave no notice except what the probate record shows. The heirs listed were the half brothers and sisters and offspring of half brothers and sisters as given by Dr. Kelleam, and his sister. She seemed to have a better recollection of it than he did. Together they got me up the names of them. I think maybe they had written around and inquired and found out.

On cross-examination by Mr. Young, the witness testified:

There was no effort to conceal from them the pendency of those proceedings in Creek County.

In regard to the letter I wrote Dr. Kelleam on Jan. 13, 1938, I received a reply to it. This the witness identified and it was offered in evidence. The letter reads:

EXHIBIT

"Sells, Ariz., Jan. 17, 1938.

Mr. Streeter Speakman, Sapulpa.

DEAR MR. SPEAKMAN:

Your letter in regard to Mr. Greene received.

I don't see why he should want to continue to harass me.

Also I have used up all of my leave and I do not see why he cannot submit his proposition in writing. I can pass upon it as well.

As you know Mr. Greene got service upon me before.

That is not the reason why I do not wish to come to Tulsa now. I made three trips back in 1937 and each one cost me about $100.00 each.

Please try to persuade him to leave us alone. If he will his company will not lose anything. If other suits are entered all will be eaten up in the courts.

Mr. Lebow a partner says the oil has dropped so that all of L. D.s interest is not worth over $3000.00.

Why Greene is hostile to me I don't know. It looks like he is helping Finch all he can.

I have asked Mrs. Southard to see you and get our deal all straightened out.

We have put our trust in you, you handled the other [fol. 114] suit and have better knowledge of the case than anyone else and we want you to go ahead.

Let Mr. Green submit his proposal in writing.

Yours truly, E. A. Kelleam, M.D.

Copy to Mrs. Southard.

Can't you bring the case in County Court to a verdict? Why won't Judge Willhite rule on it?"

The Court: "What is this trouble down there, Mr. Speakman about this being an ancestral or nonancestral estate?"

A. "I went into the matter thoroughly. As far as the facts are concerned, I think there is no difference. There may be a dispute as to the law. This deceased got the money which he invested, according to my investigation in this deal, he got the money from his mother. Had the checks, the bank records, showing them to me specifically got this money from his mother and I investigated it and concluded that it was a maternal ancestral estate which he left. The only question was a question of law as to whether or not he, having invested it, it lost its identity. That is just the long and short of it. I don't think he borrowed the money from his mother. I think she just gave it to him. I never found any evidence of a loan so far as I remember. I may be somewhat confused but that is my recollection of the situation. The matter was presented to the County Court of Creek County. We had present the cancelled checks and the bank records and all the data I was able to muster and introduced them in evidence."

In answer to a question by the court the witness testified:

"Dr. Kelleam was a full brother to the deceased and Mrs. Southard a full sister. They started a proceeding down there and left these half brothers and sisters entirely out of the picture. Word got to them somehow."

The Court: "Well, some of them found out and came down there?"

A. "Yes, sir. Some found out and made a protest and settled."

The Court: "Paid them off?"

A. "We made a settlement with them. We didn't pay a full share."

[fol. 115] The Court: "Compromised with those who came to Sapulpa with a view to appearing."

On redirect examination by Mr. R. A. Young, the witness testified: You (Mr. R. A. Young) I believe, Mr. Cook, and myself and a Mr. Pearson from Arkansas drew up the compromise settlement agreement. The reason for the settlement with the heirs at Fayetteville was that I thought it to the best interests of my clients to do so. Sure I had some doubts at the time whether this was an ancestral estate. I always have a doubt as to litigation.

Objection by Mr. Glenn O. Young: "We object to that as incompetent, irrelevant and immaterial. He had a right to compromise his clients law suit."

The Court: "Yes, but people haven't got a right to conceal from the court that there were other heirs living somewhere. They ought to be brought before the court and let the court have all the facts and determine it."

Glenn O. Young: "This compromise doesn't indicate concealment, it merely indicates a settlement."

The Court: "No, but the petition introduced in evidence for the appointment of an administrator designates this doctor and his sister as the only heirs, when it is known that there were other people that ought to have been listed and their post office addresses given, and they ought to have been brought before the court and given a chance to be heard upon the matter. That is no way to run a proceeding in probate, in my judgment."

Glenn O. Young: "Suppose this is the circumstance: That these parties contended they were the sole heirs?"

The Court: "That is all right. I say when you come in and file a petition to have an administrator appointed over an estate that is going to administer that estate, in fairness to the court he ought to list all of the kin folks that might be heirs. He cannot judge under the law whether they are heirs or not."

Mr. Young: "The Supreme Court of Oklahoma has passed on that identical matter and held there is no duty on an administrator to list others (than those he admits to be) heirs, any more than when a proceeding is filed in this court."

The Court: "I wouldn't want the title to property and [fol. 116] I wouldn't want as a good lawyer to pass an abstract where there had been any such proceedings without listing all the parties and get them into court. Understand I am not prejudging whether they were heirs or not but I say by that administration proceeding they ought to have been brought in."

Mr. Glenn O. Young: "When (we) get to the question of law, I will show your Honor first that the doctor listed all the persons in his application for administration that had any claim to administer, which is all he was required to do under the law; second, he is not required to list others than (those) whom he thinks are heirs. He is not obligated to list persons whom he claims are not heirs at law."

The Court: "As I understand it he was a full brother to the deceased?"

Mr. Young: "Yes, sir, that is true, and as such he was entitled to administer it."

The Court: "He also knew there were half brothers and half sisters?"

Mr. Young: "I think he did."

The Court: "Then he should have brought that to the attention of the court."

Mr. Young: "Whey should he have brought that to the attention of the court any more than other relatives?"

The Court: "He should have named everybody that stood in the relation of brother and sister."

On further examination by Mr. R. A. Young the witness testified the intent of this settlement with these heirs at Fayetteville was to dispose of their claims. They got their money when the decree became final.

Q. "If some other heir came in and successfully contested this thing, they wouldn't only contest it for themselves but necessarily and essentially for these people who were making the settlement. There was no agreement of secrecy. We made all parties that we complained of parties to this proceeding to distribute the estate, and the notice by publication, which is the process provided by the statute, was issued against them, specifically naming them. I made an investigation and determined that this money came from [fol. 117] the mother of Dr. Kelleam and Nell Southard. We went to their old home in Arkansas, checked up all the bank records there I could find, went out in the old barn, the secretary and myself, spent most of the afternoon checking thru a lot of old records that had been dumped out. All that were material were introduced in the County Court.

J. M. Scott, for the complainant, testified: That he lived at Mounds, Oklahoma, and had known Legette D. Kelleam all his life; that he had known Dr. E. A. Kelleam since July, 1936. Prior to the death of Legette D. Kelleam he had business relations with him concerning drilling a producing oil property in 6-18-7 in Creek County, known as the Vance-Kelleam lease. Legette Kelleam and I acquired a joint interest in the lease in 1930 or 1931. There were several interests involved. One man furnished the tools and drilling machine to drill the well. I furnished the casing, and L. D. Kelleam furnished the money for the development of the lease. Legette Kelleam owned an interest in this property at the date of his death. I continued that operation thru Dr. E. A. Kelleam as administrator. Regarding the value of the property, I would hate to set a value on it. I could value it according to the way I value my interest. I would say the part that is supposed to belong to the estate is worth $4,000.00. I think the Oklahoma City property worth $3,500.00 for the two properties. The property at Drumright $2,500.00 but that might be a little big. This property is all in my hands as receiver at this time. (Testimony as to the value of this property from this witness was received over objection because the witness was not qualified.) On cross-examination the witness testified:

Q. On what facts or circumstances do you base your statement as to the value of that property in Oklahoma City?

A. From the agent who managed the property for the estate.

Q. Just hearsay so far as you are concerned?

A. That is right. As a matter of fact I looked into it after I was appointed receiver.

Q. Where do you live?

A. I live at Mounds.

Q. Do you own property in Drumright?

A. No, sir.

[fol. 118] Q. Have you ever bought or sold property there?

A. No, sir. I base my statement in respect to Dr. Kelleam's property in Drumright upon investigation. Just a question of values by traders and dealers. I own other leases. I did own some adjoining or near this lease but sold those out. By virtue of the order appointing me receiver I took charge of the property in Oklahoma City, but took charge of no personal property, notes, bonds, or assets of that sort, and made no effort to do so. I took charge of no property outside of Creek County other than that in Oklahoma City. I was not present when I was appointed receiver but have been in custody and management of the oil leases in Creek County and the lots in Oklahoma City since. On redirect examination, the witness testified that he had not been able to find any personal property which he believed belonged to the estate; that he was actually operating the oil lease before he was appointed receiver.

Mrs. Ethel Riddler, for the complainant, testified: I live in Ft. Smith, Ark., and have known Legette D. Kelleam all his life. Ed (E. A.) Kelleam and Nell Kelleam (Southard) were his own brother and sister.

Mr. Young: "We object to all this evidence on the ground that the question is res judicata, having heretofore been determined by the probate court in Creek County, Oklahoma."

The Court: "I will let her answer."

A. Legette D. Kelleam left quite a few nieces and nephews.

Q. "Can you name them?"

A. "I will have to read them off. I can't remember their married names.

Mr. Young: "We object to her reading them."

The Court: "First, did he leave any other brothers and sisters besides Ed Kelleam and Mrs. Southard?"

A. He left half sisters, Mrs. Clyde Bates and Fannie Bates of Fayetteville, Ark.; my father Jim Kelleam, was a half brother, that is J. M. Kelleam. They had the same father. He was dead. He left my sister, Mrs. Dorothy Payne and Mrs. Ethel Riddler. Then he had a half sister, Mary Perkins. She is dead. She left surviving Mrs. Fannie [fol. 119] Bell Bates and Bess Perkins, I don't know her married name. I have a list of those collateral relatives.

Over objection by defendants, the witness testified from a list that Mrs. Bess K. Mathis is the daughter of Mary Perkins, his half sister. Mrs. Frances Bell Bates is another daughter of Mary Perkins; James K. Perkins, Glenn Perkins, and Mrs. Eloise Culp. He had a half brother, W. S. Kelleam, who is deceased. He has a daughter, Katherine. That deceased brother left the following children: Mrs. Kathleen Lighter and Clifford Kelleam. Mrs. Kate Kelleam Hale, deceased, a half sister, left five surviving children; Mr. H. L. Hall, Mr. W. L. Hall, Mrs. W. H. Bradley, Mary K. Hall, and Kelleam Hall. He had one deceased half brother, Dr. R. S. Kelleam who left four surviving children: Dr. F. Q. (Fannin) Kelleam, Miss Frances Kelleam, Miss Jim Kelleam, and Mr. Robert Kelleam. He left Mrs. Clyde Bates of Fayetteville and Mrs. Fannie Bates, who were half brothers and sisters. These are not parties to this law suit. They are the parties the settlement was had with. That is all the half brothers and sisters and their children. All of these named heirs, half brothers and sisters, live either in Oklahoma, Arkansas, or California.

On cross-examination by Mr. Glenn O. Young the witness testified:

Mr. R. A. Young prepared this list for me. He is one of the lawyers in the case and is related to the Kelleam family. I did not attend L. D. Kelleam's funeral. I had not seen him for three years before he died. He lived in Ft. Smith a good many years. The family had separated a good many years ago. We got along with Legette. We liked him. He came to see us the last time he was in Ft. Smith. I live in Ft. Smith.

The Court: Of course that would not be material. Lots of families scatter all over the country and very seldom see each other. Do you take any serious issue with them?

Mr. Young: I don't believe any two witnesses will agree as to who they are or where.

The witness continued: The heirs who live in California are scattered around in California. I could not tell you which ones are there and where. I can't give the post office address of any single one who is in California but I have [fol. 120] uncles who could. I know they are living. I hear of them thru my uncles. I heard from one about six months ago. There may be one or two I haven't heard from.

The Court: "It is not very material where each one of these nieces and nephews might live."

The witness continued: Mrs. Fannie Bates and Mrs. Clyde Bates were the only half-sisters living at the time Legette Kelleam died. It had been ten years before Legette Kelleam died since I had seen Dr. E. A. Kelleam. We were on good terms. He just wasn't in Ft. Smith. Mrs. Nell Southard never came to Ft. Smith. I had not heard from her in maybe ten or fifteen years. I don't know whether she had heard from any of these other relatives of Dr. Kelleam in ten years before Legette Kelleam died.

The Court: "I don't think that is important."

Mr. Glenn O. Young: "It is legally important to this extent: He had a right to presume they were not living."

The witness continued: Dr. Fannin Kelleam, I think, was a nephew or niece of Legette K. Kelleam that had visited Legette and Mrs. Southard in ten years before Legette died. That is just what I think, I didn't come with him. So far as I know none of them visited Mrs. Southard or Dr. Kelleam before Legette died.

Redirect examination by R. A. Young: My husband was a doctor in Ft. Smith where I have lived all my life. I saw Legette Kelleam whenever he came to Ft. Smith. I know where E. A. Kelleam lives. From the different heirs I heard at different times where the other heirs resided. I did not receive any notice from the Creek County Court in regard to that suit. None at all. My sister heard that the estate had been administered and told me. That was two years ago last October.

Francis Kelleam, witness for the complainant, testified: My home is in Sallisaw. I am working in Oklahoma City.

I knew Legette D. Kelleam. He was my father's half brother. My father's name was Dr. R. T. Kelleam. He lived in Sallisaw until he died in 1927. I have a brother in Amarillo, a brother in California and a sister in Oklahoma City. I have been in Oklahoma two years. I know [fol. 121] E. A. Kelleam very well. He is a half brother to my father.

JIM KELLEAM, witness for the complainant, testified: My home is in Sallisaw. I am in Oklahoma City at the present time. Am a sister of Miss Kelleam who just testified. My father was R. T. Kelleam who was a half brother to Legette D. Kelleam and to E. A. Kelleam. Mrs. Nell Southard was a half sister to my father. I have been in Oklahoma City for 21 months. My father died at Sallisaw in 1927. Frances and I have two brothers. Dr. Fannine Kelleam (one of them) is in Amarillo.

On cross-examination by Mr. Glenn O. Young, the witness testified:

I have never seen Mrs. Nell Southard. I do not know R. J. Southard, Jr. Did not attend L. D. Kelleam's funeral. I don't think my sister attended. It was two or three years before my father died that I last saw L. D. Kelleam. I don't remember the exact year. At the time I was living at Sallisaw and he at Drumright. I visited Dr. E. A. Kelleam in his home in 1926; that is the last time I ever saw him. I was living in Sallisaw. I did not write to him nor he to me. Our relations were friendly. The family has not been divided. We were just not trained together.

Redirect examination by Mr. Finch: My father and Dr. E. A. Kelleam at one time practiced medicine together in Sallisaw. There was no ill-will so far as I know. I have been in other states. I don't even know where E. A. Kelleam lives. I hadn't seen or heard from him for ten years or more. I knew he was working for the Indian Agency.

Questioned by Mr. Green, the witness further testified that about ten years ago she visited Dr. E. A. Kelleam who was then living at Garvin, Oklahoma.

(The plaintiff rests.)

By Mr. Finch: At this time the cross-petitioners introduce certified transcript of the record of the probate pro-

ceedings of the estate of Mary A. Kelleam, mother of the deceased, Legette D. Kelleam, to show the kind of property that was acquired by Legette D. Kelleam from the estate of [fol. 122] his mother. He got three lots in Blanchard worth $1,500.00. (The substance of these instruments has already been set forth.)

Mr. Finch: "I want to introduce certified deeds of property acquired by the deceased, Legette D. Kelleam, in Oklahoma City as cross-petitioners' Exhibit No. 2." These instruments received in evidence are substantially as follows:

EXHIBIT

General Warranty Deed from Tulsa Bldg. & Loan Assn. to Legette D. Kelleam, filed for record Aug. 18, 1933, recorded in book 439 at page 551, conveying Lots 7 and 8, Block 2, Bell Vern Addition to Oklahoma City, duly acknowledged, executed and recorded.

EXHIBIT

General Warranty Deed from Tulsa Bldg. & Loan Assn. to Legette D. Kelleam, recorded Aug. 18, 1933, in book 439 at page 550, dated Aug. 8, 1933, and conveying all of Lots 29 and 30, Block 7, College Hill Addition to the city of Oklahoma City, Oklahoma, duly executed, acknowledged and recorded.

Consideration in both instruments was $1.00 and other valuable consideration. Cross-petitioners also introduced in evidence various orders approving claims, allowing expenses, regarding taxes, etc., entered in the course of the administration of decedent L. D. Kelleam's estate, in the County Court of Creek County, which not being material to any question involved in this appeal are not transcribed.

LEE SNIDER, recalled for further examination by cross-petitioners, testified over objection by defendants: There is no record to show that E. A. Kelleam appointed a service agent in that probate proceeding.

Cross-petitioners rested.

Mr. Glenn O. Young to the court: "We are going to stand on a demurrer."

The Court: "You file a motion to dismiss the proceeding on the ground of the insufficiency of the complaint and evidence?"

Mr. Young: "That is true, we demur to the evidence and [fol. 123] move to dismiss on the grounds: first, that the court is without venue of the cause of action, these defendants not having been served in the Northern District; second, that the court is without jurisdiction over this cause of action, first because it is a proceeding in probate, and second because it has no jurisdiction over the parties or causes of action; third, because the matters have heretofore been fully adjudicated by the County Court of Creek County; fourth, because there is still pending in the County Court of Creek County an action previously instituted, involving the same matter, and fifth, because there is instituted and still pending a proceeding in the District Court of Creek County, a proceeding involving this same matter.

After discussion between the court and counsel as to why the proceeding on appeal to vacate the order of distribution has not been disposed of in the District Court of Creek County not relevant to any issue here, Mr. Young stated: "The last ground of my motion is upon the ground of diversity of citizenship. There is not the requisite diversity of citizenship; the case is not wholly between residents of different states, and we say generally that the cause should be dismissed because the evidence fails to establish any cause of action in favor of the bonding company, plaintiff, and against the defendants, nor a cause of action in favor of the cross-petitioning defendants and over which this court has jurisdiction."

Mr. Glenn O. Young for defendants submits request for findings of fact and conclusions of law without prejudice in view of the jurisdictional questions raised by motion.

The Court: "I will let you do that. Now I will let you gentlemen submit me briefs."

EXHIBIT 1

Estate of Legette D. Kelleam, Deceased. E. A. Kelleam, Administrator. In County Court. No. 4354

Petition to Reopen Case

Come now, Mrs. J. M. Kelleam, Ethel Riddler and Dorothy Payne and respectfully shows to the court, that Mrs.

J. M. Kelleam is the widow of J. M. Kelleam, deceased and Ethel Riddler and Dorothy Payne are children and only heirs of J. M. Kelleam. And that J. M. Kelleam was a [fol. 124] brother of Legette Kelleam, deceased, who died intestate and whose estate was administered by E. A. Kelleam, a non-resident of the State of Oklahoma and a resident of the State of Arizona. That E. A. Kelleam at all times here, knew that your petitioners herein, were heirs of the estate of Legette Kelleam and that in his petition for letters of Administration he failed to list your petitioners as heirs. That this was fraudulently done by him. Your petitioners further state, that they had no notice of the death of Legette Kelleam, his appointment as administrator of the estate, or that the estate had been closed, until after each and all of the acts had been done and that they never at any time directly or indirectly had any notice of any proceedings in this case, and have been denied their rights in and to the estate because of said fraud.

Your petitioners further state, that the appointment of an administrator was without notice and void, because of the non-residence of the Administrator and of the failure to give notice. That all the proceedings herein, from the appointment of administrator until final order of distribution was made, was void without legal force and effect for the reasons herein set out.

That at the time of the death of Legette Kelleam, he owned 7/16 interest in an oil and gas lease, being disribed as the SW¼-SW¼ of 6-18-7, being located in Creek County, Oklahoma. That practically all the balance of the estate consisted of personal property and money, which had been distributed by the order of this court. Your petitioners asks this court to declare lien of the above estate. That the Maryland Casualty Company be made a party to this action, it being the surety company who wrote the bond of E. A. Kelleam, the Administrator herein for the sum of $12,000.00.

Wherefor-, the petitioners pray that this case be reopened and an administrator be appointed an- that they be decreed there legal right in and to the above estate. And that the court set aside and hold for naught all orders made in this case.

Miles, Armstrong & Young, Heber Finch, Attorneys for Petitioners.

Received and Filed in County Court, Creek County, September 21, 1937. Lee Snider, Court Clerk, by Bess Ryan, Deputy.

[fol. 125] EXHIBIT 2

Estate of Legette D. Kelleam, Deceased. E. A. Kelleam, Administrator. In County Court. No. 4354.

Amended Petition

Comes now Mr-. J. M. Kelleam, Ethel Riddler, Dorothy Payne, first having obtained permission of the court and files this as their amended petition herein. Comes now, J. K. Perkins, a son of Mary Perkins, deceased, who was a sister of Legette D. Kelleam, and Leggette Hall and Lamar Hall, children of Kate Kelleam Hall who was a sister of Legette D. Kelleam and Frannie C. Kelleam, Francis Kelleam, Robert Kelleam, and Jim Kelleam, being all the children and heirs of R. T. Kelleam deceased, who was a brother of Legette D. Kelleam, each of the additional parties to this amended petition first having obtained permission of the court to become parties to this action and respectfully state, that they and each of them adopt each and every material allegation contained in the original petition filed herein on August 8, 1936, leaving the following heirs, whos- names and last known address as follows:

E. A. Kelleam, a brother—Sells, Arizona.
Nell Southard, a sister—Blanchard, Oklahoma.
Mrs. Fannie Bates, a sister—Fayetteville, Arkansas.
Mrs. Clyde Bates, a sister—Deceased, leaving the following named children and heirs, residents of Fayetteville, Ark. Robert Bates, Jim Bates, Mrs. Thomas Bates Richerson.

Mary Perkins, a sister—deceased, leaving the following named children and heirs. J. K. Perkins—Milwaukee, Wisconsin; Mrs. F. Bates—Long Beach, California; Glen Perkins—Long Beach, California; Bess Mathews—Santa Anna, California; Mrs. Eloise Kulp—Long Beach, California.
R. T. Kelleam, deceased.
J. M. Kelleam, deceased.
The heirs of both R. T. Kelleam and J. M. Kelleam are the petitioners herein Katherine Kelleam Hall—deceased,

a sister of Legette Kelleam, leaving the following heirs, Legette Hall—Little Rock, Arkansas; Lamar Hall—Waldrum, Arkansas; Margaret Bradley Kelleam—..... California; M. H. Hall—..... California.

W. S. Kelleam, deceased, a brother, leaving the following heirs. Clifford Kelleam—..... California.

[fol. 126] Your petitioners herein would respectfully show to the court that the original petition for letter of administration signed and verified by E. A. Kelleam and Nell Southard, which petition is specifically referred to in this amended petition, alleged and stated that the petitioners E. A. Kelleam and Nell Southard were the sole and only heirs of the deceased Legette Kelleam and that the place of residence of the petitioner, E. A. Kelleam was the Theral Hotel, of Drumright, Oklahoma, the persons herein set-out were also heirs of the deceased Legette D. Kelleam and these facts were known to the petitioners at the time they filed their petition for the appointment of an administrator and that the heirs herein mentioned were omitted in the said petition for the fraudulent purpose of preventing them and each of them from participating in the estate of the deceased E. A. Kelleam. That all of the said heirs were either brothers or sisters of the petitioners or the children of deceased brothers and sisters. That none of the named heirs herein, signed any agreement, or waiver, giving their consent to the appointment of E. A. Kelleam Administrator, a non-resident of the estate of Legette D. Kelleam. That the said appointment as administrator by E. A. Kelleam was obtained by fraud and misrepresentation on his part and Nell Southard.

Your petitioners further state, that they had no notice either actual, or constructive of the petition filed by E. A. Kelleam and Nell Southard for the purpose of appointing an administrator of the estate of Leggette Kelleam and no notice of hearing on the same, or any proceeding of any kind whatsoever had in this case prior to the time a final order of distribution was made in this case on — day of ——, 1937.

Your petitioners further state, that Francis Kelleam and Jim Kelleam, heirs and petitioners herein, were at all times from August 8, 1936, up to the present time citizens and residents of the state of Oklahoma and that this fact was at all times herein known to E. A. Kelleam and Nell Southard.

Your petitioners further state that E. A. Kelleam and Nell Southard the distributees under the final order of this court, which order was obtained by fraud and collusion as herein set out, received all the real estate and personal property of the deceased Legette D. Kelleam and since the original petition was filed herein to re-open this case. The said E. A. Kelleam and Nell Southard have fraudulently [fol. 127] attempted to dispose of all of the real estate obtained by them from the estate of Legette D. Kelleam by conveyances, which preported conveyances attempted to convey the property to different members of their respective families.

Your petitioners further state, that they at no time had any notice of the alleged administration of E. A. Kelleam and some of the petitioners herein, did not know of his death, until after the final order of distribution was made. That any order made in this case was obtained by fraud and was void and of no legal force or effect.

Your petitioners and each of them state, they have received no money, property, or other thing of value from the estate of Legette D. Kelleam, or from the administrator of the said estate of E. A. Kelleam, that none of the other heirs mentioned herein have received anything whatsoever from the estate of the deceased Legette D. Kelleam, with the exception of Mrs. Fannie Bates and Clyde Bates. Your petitioners have been informed, believes, and therefore charges, that some kind of a settlement between E. A. Kelleam, Nell Southard and these two heirs was perfected before the final order of distribution was made in this case.

Wherefore your petitioners pray, that legal notice be given to all the heirs mentioned herein, excepting those who have joined in this petition for the appointment of some fit and suitable person as administrator of this estate, that the Maryland Casualty Company, a corporation, a surety on the bond of E. A. Kelleam be given notice. That the court by proper order set the time and place for hearing on this petition for attorney's fees for the cost of this action and for all proper relief. That all orders made while E. A. Kelleam was the acting administrator of the estate of Legette Kelleam be vacated, set aside, and held for naught.

Miles, Armstrong and Young, by Heber Finch; Pliney Fry, by Heber Finch; Heber Finch, Attorneys for Petitioners.

State of Oklahoma,
County of Creek, ss:

Personally appeared before me Heber Finch, who states that he is the attorney for the petitioners herein, that he [fol. 128] had read the foregoing petition and the statements therein contained are true, that noen of the parties to this action are in Creek County at the present time.

Heber Finch.

Sworn and subscribed to this 16th day of November, 1937. Ruth Bayne, Notary Public. My commission expires, June 29, 1938.

Received and filed November 16, 1937, in County Court, Creek County. Lee Snider, Court Clerk, by Bess Ryan, Deputy.

Acknowledgment of Service

The undersigned attorneys for appellees hereby acknowledge service of copy of Designation of Record on Appeal, together with a copy of Exhibit A, thereto attached, containing narrative statement of the evidence and proceedings at the trial and portions of the record to be incorporated therein.

Dated this the 28 day of December, 1939.

Green & Farmer, Heber Finch, Attorneys for Appellees.

[File endorsement omitted.]

Exhibit "C"

In the County Court within and for Creek County, State of Oklahoma

No. 4354

In the Matter of the Estate of Legette D. Kelleam, Deceased

Petition for Approval of Final Account, for Decree Determining Heirship and for an Order of Distribution Pursuant Thereto

Comes now E. A. Kelleam, administrator of the estate of Legette D. Kelleam, and respectfully shows to the court:

That heretofore, to-wit, on or about August 8, 1936, Legette D. Kelleam departed this life; that upon the day and

date of his death he was an actual and bona fide resident of Creek County, Oklahoma, and had property and estate in said county; that upon the day and date of his death said decedent was unmarried; that he left him surviving neither wife, child or children, or issue of deceased child or [fol. 129] children, nor mother or father, nor brother or sister, nor issue of deceased brothers and sisters, except the following who are his sole and only heirs at law:

E. A. Kelleam, brother, age 54 years, whose address is Sells, Arizona, and Nell Southard, nee Kelleam, age 48 years, whose address is Blanchard, Oklahoma;

That search has been made among the personal property and effects of the said Legette D. Kelleam and in all places of every kind where any instrument of such nature might reasonably be expected to be found to ascertain whether said Legette D. Kelleam left a will and that none was found; that petitioner as the result of said search alleges that said decedent died intestate;

Petitioner avers that subsequent to the day and date of said Legette D. Kelleam on joint petition of the aforesaid Nell Southard, nee Kelleam, and your petitioner, the undersigned was, after due and proper notice to all persons interested in said estate, as required by law, designated and appointed administrator of the estate of said Legette D. Kelleam; that having duly qualified as such, as required by law, he entered into and took possession of the property of the said Legette D. Kelleam; that said property was duly inventoried and an inventory returned as provided by law; that a true and correct copy of said inventory is on file in this court and is by reference made part hereof as Exhibit A;

Petitioner says further that thereafter and on the 25th day of August, 1936, notice to creditors was duly and regularly given as evidenced by proof of notice duly filed herein and to which reference is hereby specifically made as Exhibits B and C; that thereafter all creditors, so far as known to your petitioner, did duly and regularly present their claims under oath, as required by law; that all just claims against said estate have been duly paid; that your petitioner has prepared and presents herewith as Exhibit D his Final Account wherein is correctly set forth all his doings as administrator of the estate of Legette D. Kelleam, including all items of property and money received and all claims paid, together with proper vouchers.

Petitioner further respectfully shows to the court that among property standing in the name of said Legette D. Kelleam was a certain undivided one-sixteenth interest in [fol. 130] an oil and gas lease belonging to and being the property of one E. E. Simpson but held by said Legette D. Kelleam pursuant to an agreement to secure payment of an undischarged balance due against said interest; that said indebtedness so due and owing by said E. E. Simpson has been fully and finally paid and discharged and that said E. E. Simpson and his assigns have requested and directed and do now request that your petitioner as administrator assigns, release, and transfer to —— —— said undivided one-sixteenth interest in said Sam Vance lease, that is to say:

An undivided one-sixteenth interest in an leasehold for oil and gas covering the Southwest Quarter (SW¼) of the Southwest Quarter (SW¼) of Section 6, Township 18 North, Range 7 East, Creek County, Okla.;

that save and except for securing payment of said indebtedness so due and owing, as hereinabove set forth, said undivided one-sixteenth interest in said leasehold estate was not a part or portion of the estate of Legette D. Kelleam;

Petitioner says further that as administrator he collected and accounted for property of value in the sum of $——; that he is entitled to compensation for services as administrator for the first thousand dollars at the rate of 5%, for all above that sum and not exceeding five thousand dollars at the rate of 4%, and all above that sum at the rate of 2½%, that is to say in the sum of $——, of which no part has been paid; that in the discharge of his duties as administrator, he did, by approval of court, retain and employ Glenn O. Young as his attorney, who claims reasonable compensation in like amount, that is to say: $——, of which $250.00 has heretofore been advanced and paid by order of court, leaving a balance due him of $——; that your administrator has further disbursed and paid out inheritance taxes in the sum of $——; or incurred liability for said sum, which should be directed paid and deducted from any moneys in his hands, as shown by the accompanying statements and vouchers.

Wherefore, premises considered, your petitioner respectfully prays the court that his Final Account so presented

and filed herein, together with this petition for distribution be set for hearing on a day certain, to be fixed by the court; that due and legal notice of the day and date thereof be given as provided by law; that upon final hearing herein [fol. 131] this court by its judgment, order and decree find E. A. Kelleam and Nell Southard, nee Kelleam, respectively the brother and sister of the deceased, Legette D. Kellear., to be his sole and only heirs at law and as such entitled each to an undivided one-half interest in all property, real, personal or mixed, of any kind and character and wheresoever situated of the said Legette D. Kelleam to be theirs absolutely free, clear, and discharged of all claims and demands of any other persons whomsoever subject to lawful claims and demands established, allowed and fully paid in this administration;

That your administrator be authorized, empowered, and directed to release and turn over to the assignee of E. E. Simpson an undivided one-sixteenth interest in the Sam Vance lease, as hereinabove set forth, and to sign or execute appropriate division orders directing payment to said assignee of oil, gas, or casing head gas accrued or accruing from said one-sixteenth interest.

That your administrator be allowed compensation to himself and fees to his attorney, as hereinabove set forth; that he be allowed costs accrued and accruing herein and unpaid as may be fixed and determined by the clerk of this court; that inheritance taxes, as stated hereinabove, be directed paid; that your administrator be ordered and directed thereupon to distribute the remaining property of every kind and character of Legette D. Kelleam in parts as follows:

To E. A. Kelleam, one-half;
To Nell Southard, nee Kelleam, one-half;

That upon making said disbursements and taking and presenting to this court proper receipts evidencing the same, your petitioner be finally discharged as administrator of the estate of Legette D. Kelleam from all further duties or responsibilities hereof of any kind or character; that his bond be ordered exonerated and discharged from any further liability and that he go hence without day.

(Signed) E. A. Kelleam, Administrator. Glenn O. Young, Atty. for Administrator.

Endorsed: Received and Filed in County Court, Creek County, March 3, 1937. Lee Snider, Court Clerk.

[fol. 132] EXHIBIT "D"

Final Account of Administrator

State of Oklahoma, Creek County, ss.

In the County Court of said County

To the Judge of said Court:

The undersigned, as the administrator of the estate of Legette D. Kelleam, deceased, respectfully submits the following as a full and correct account and report of his administration as such administrator from August 25, 1936, to the 20th day of March, 1937, which account exhibits not only the debts which have been paid, but also contains a statement of all the debts which have been presented and allowed during the period embraced in this account.

Administrator charges himself with the following, to-wit:

Date Month Day Year	Items Received	Amount
	(1) Lot 18, Blk. 5, Broadway Addn., Drumright, Okla.	1,100.00
	(2) Lot 11, Blk. 1, Drumright Addn., Drumright, Okla.	400.00
	(3) Lot 7, Blk. 2, Belle Vern Addn., Okla. City, Okla.	3,000.00
	(4) Lot 8, Blk. 2, Belle Vern Addn., Okla. City, Okla.	
	(5) Lot 29, Blk. 7, College Hill Addn., Okla. City	2,000.00
	(6) Lot 30, Blk. 7, College Hill Addn., Okla. City	
	(7) 100 shares Idaho Copper Co. #C3332 Par $1.00 share	none
	(8) 100 shares Idaho Copper Co. #C48653 Par $1.00 share	none
	(9) 100 shares Idaho Copper Co. #C48654 Par $1.00 share	none
	(10) 4 shares Crosley Radio Corp. Com. No. C01811	120.00
	(11) Acct. No. 1571 Savings Dept. Nat'l Bank of Tulsa	11.72
	(12) 2 shares Crosley Radio Corp. Com. #NY 3354	68.00

EXHIBIT "D"—Continued

[fol. 133]

Date Month Day Year	Items Received	Amount
	(13) 96 shares Tri-State Royalty Corp. No. F59, Tulsa	none
	(14) 300 shares Irwin Davis Petroleum, Okmulgee, Okla.	none
	(15) 1 Royalty Deed, undivided 10 acre int. in 640 acres described as Survey No. 1, Blk. B 1, Public School Land, Winkler County, Texas	none
	(15A) Mineral Deed, undivided .5 acre int. N½ NE¼ of Section 23, Twp. 12 North, Range 4 East	none
	(16) 10 shares No. 246 Capitol Oil & Gas Co., Wichita, Tex.	none
	(17) 10 shares No. 147, Okmulgee Oil & Leasing Co. Ft. Worth	none
	(18) 10 shares No. 146, Okmulgee Oil & Leasing Co. Ft. Worth	none
	(19) 28 shares No. 380 Sneed Petroleum Co., Tulsa	none
	(20) 528/600ths of a share No. T42 scrip certification (Sneed Petroleum Co.) capital stock	none
	(21) 100 shares Studebaker Corp. # NY 160490 Com.	none
	(22) 1 Oil & Gas Lease from John D. Hill & Nellie Hill, Morris Summy & Lucie Summy to L. D. Kelleam & F. E. Vensel on Lots 6, 8 & 12, Sec. 31, Twp. 19 N., Range 7 East	none
	(23) 50 shares Home State Voting Trust of Home State Ins. Co.	150.00
[fol. 134]		
	(24) One invoice of furniture in Drumright home $15.00 but less $7.00 for furniture sold qv.	8.00
	(25) One Ford Coupe, '36 model with radio, motor No. 18-2160494, actual cost $657.77	400.00
	(26) One liquidating agent's certificate # 282 for $115.41, half paid	11.50
	(27) One contract between L. D. Kelleam & Harry L. Charles & Virginia S. Charles, giving L. D. Kelleam ½ int. in royalty on book (Wichita, Kan.)	none
	(28) One cert. # 207, 10 shares in Home Bldg. & Loan Assn., Drumright, Okla. $358.00 less $67.50	290.50

EXHIBIT "D"—Continued

Date Month Day Year	Items Received	Amount
	(29) Two shares Standard Oil Co. (of Ind.) # 043930	74.00
	(30) 4/10ths of share, # 385, American State Bank, Charleston, Ark., par $25.00	10.00
	(31) Two shares, # 431 American State Bank, Charleston, Ark., par $25.00	50.00
	(32) 1/5th share No. S23012 Columbia Oil & Gas Corp.	none
	(33) 1/5th of a scrip share cert. Columbia Oil & Gas Corp.	none
	(34) 10 shares, # C03411, Columbia Oil & Gas Corp.	30.00
	(35) 5 shares # C01624, Okla. Gas & Elec. Co. par $100	500.00
	(36) 4 shares # 9767, Okla. Gas & Elec. Co. Par $100	400.00
[fol.135]		
	(37) Special overwriting agreement of M. A. Evans Co., Tulsa, Okla. Nos. 529, 530, 531, 532, 533, 534, 535, 536	none
	(38) 2 shares No. CN2727663 Columbia Gas & Elec. Corp. common, New York	42.00
	(39) One Oil & Gas Lease # 10,407 from W. M. Shumaker & Elizabeth Shumaker to C. G. Giblin & L. D. Kelleam	none
	(40) One No. 99381 C.S.U.B. 5% Gold Deb. due 1950	810.00
	(41) 7/16ths Int. Sam Vance Lease, SW¼ SW¼ 6-18-7	8,610.00
	(42) One cashier's ck. American State Bank, Charleston, Ark.	62.80
	(43) 1/32 overriding royalty int. Sam Vance lease	1,400.00
	(44) Nat'l. Aid Life Assn. Policy # M-6,803	1,000.00
	(45) Nat'l Aid Life Ins. Policy # 115532 (Policy $732.00 collected see following.)	
	(46) 300 shares common Wealth Southern	312.50 Inventoried at
	(47) Note of Nell Southard, Blancard, Okla. $ 700.00	none

EXHIBIT "D"—Continued

Date Month	Day	Year	Items Received		Amount
			(48) Note of R. J. & Nell Southard, Blancard, Okla.	4,000.00	none
			(49) Note of Grover Keely	100.00	none
			(50) Note of R. J. & Nell Southard	1,000.00	none
[fol.136]					
			(51) Note of Pleas Carter	25.00	none
			(52) Note of R. J. & Nell Southard	700.0	none
			(53) Note of J. N. & Lou Ann Pinkston	400.00	none
			(54) Acct. of E. E. Simpson	590.77	590.00
			(55) Acct. of I. Nadle (collected, see below)		
Aug.	7,	1936.	(56) Cash in bank		2,446.08
"	14,	"	(56A) Misc. receipts deposited		979.80
"	15,	"	(57) Newell House rent		12.50
"	28,	"	(58) Cash left by L. D. Kelleam at Morningside Hosp.		30.00
Sep.	21,	"	(59) Sale of furniture		7.00
"	21,	"	(60) Nadle check		667.20
"	21,	"	(61) Okla. Gas & Elec. dividend		15.75
"	3,	"	(62) Bells Sept. rent		20.00
"	22,	"	(63) Tidewater Oil Co. for Aug. oil runs		650.53
"	22,	"	(64) Hercules Life Ins. Co. (Same at Nat'l Aid Life #44 above)		763.52
"	,	"	(65) James E. Burke rent		58.33
"	15,	"	(66) Newell house rent for Sept.		12.52
"	15,	"	(67) Check from J. M. Scott for lease expense operations		67.37
Oct.		"	(68) Rent houses at Drumright		32.50
"	14,	"	(69) J. E. Burke rent at Okla. City		55.72
"	16,	"	(70) Tidewater Oil check for Sept.		475.22
Nov.		"	(71) Rent houses at Drumright		32.50
"	18,	"	(72) Tidewater Oil check for Oct.		467.87
Dec.	9,	"	(73) Dividend check Columbia O.G.&E. 40¢—Burke rent $13.35		13.75
"		"	(74) Rent houses at Drumright (less expenses)		14.50
[fol. 137]					
Dec.	16,	1936.	(75) Tidewater Oil check for Nov.		415.51
"	23,	"	(76) Okla. Gas & Elec. check $15.75—Columbia O&G $2.50		18.25
Jan.	2,	1937.	(77) H. B. & L. Div.		67.50
"		"	(78) Rent houses at Drumright		32.50
"	19,	"	(79) Tidewater Oil check for Dec.		409.38
"	17,	"	(80) B. T. Moore note		196.80
"	19,	"	(81) Crosley Radio $3.00—J. E. Burke $16.96 & O. G. & E. $2.00		21.96

EXHIBIT "D"—Continued

Date Month	Day	Year	Items Received	Amount
Feb.	2,	1937	(82) Rent houses at Drumright	32.50
"	10,	"	(83) J. E. Burke rent, Okla. City	44.97
"	17,	"	(84) Tidewater Oil check for Jan.	320.05
"	27,	"	(85) Rent at Drumright	20.00
Mar.	10,	"	(86) J. E. Burke	59.95
"	15,	"	(87) Tidewater Oil check for Feb.	341.88
			Total amount received	$30,208.22

Contra

Said administrator asks to be credited with the following payment to creditors of deceased, as per Vouchers herewith submitted:

Mo.	Da.	Yr.	Items Paid Out		Amount
Sep.	4,	1936	To Citizens Bank, Drumright, for one note	Ck. # 1	$ 3,115.00
"	4,	"	To H. B. Martin, Drumright, for doctor bill	" # 2	122.00
"	4,	"	To Dr. C. R. Swanker, dentist (services rendered decd.)	" # 3	12.00
"	4,	"	To Masonic Hospital at Cushing for hospitalization	" # 4	141.80
"	4,	"	To Miss Faye Wilbur for nursing deceased	" # 5	7.00
"	4,	"	To Joe Coppinger for barber services a/c deceased	" # 6	4.00

[fol. 138]

Mo.	Da.	Yr.	Items Paid Out		Amount
Sep.	4,	1936	To A. H. Foreman for carpenter work on garage	Ck. # 7	$ 18.00
"	11,	"	To E. A. Kelleam for bond $75.00 & court costs $15.00	" # 8	90.00
"	14,	"	To Stubblefield Funeral home for funeral services	" # 9	650.51
"	19,	"	To T. R. Carmichael for pumping	" #10	80.00
"	19,	"	To Jim Smith for services as night pumper	" #11	10.00
"	19,	"	To Oscar Barnes for services as night pumper	" #12	10.00
"	19,	"	To Otis Smith for 1 day's labor	" #13	3.00
"	19,	"	To Clifford Waynes for 3 days labor	" #14	9.00
"	19,	"	To Frank Jefferies for 2½ days labor	" #15	7.50
"	19,	"	To Magnolia Petroleum Co. for oil	" #16	15.81

EXHIBIT "D"—Continued

Mo.	Da.	Yr.	Items Paid Out			Amount
Sep.	19,	1936	To National Supply Co. for material	"	#17	5.45
"	19,	"	To Continental Supply Co. for material	"	#18	10.92
"	19,	"	To Eureka Tool Co. for supplies	"	#19	10.86
"	19,	"	To Mexia Planning Mill for lumber	"	#20	27.87
"	19,	"	To Fluid Packed Pump Co.	"	#21	54.08
"	19,	"	To Independent Iron & Metal Co.	"	#22	82.82
"	19,	"	To Wallman Battery Co.	"	#23	1.03
"	19,	"	To Ideal Machine Co.	"	#24	7.34
"	21,	"	To E. A. Kelleam for July lease operations to reimburse himself	"	#25	128.50
"	23,	"	To Long Bell Lumber Co. for material & labor on house	"	#26	16.11
"	27,	"	To Tennis-Griffith Motor Co. for car storage, gas & oil	"	#27	18.48

[fol. 139]

Sep.	26,	1936	To Club Cafe for meals which decedent owed	Ck.	#28	$ 12.05
"	26,	"	To W. D. Tharel for hotel service	"	#29	39.91
"	26,	"	To Pearl Howell for preparing grave	"	#30	8.50
"	26,	"	To Z. D. Howard Co. for auto repairs	"	#31	18.78
"	26,	"	To W. W. Jamison for services as bookkeeper	"	#32	17.50
Sep.	26,	1936	To Dr. R. E. Leatherock for medical services	Ck.	#33	10.00
"	26,	"	To J. M. Scott for bal. due on operations of oil wells	"	#34	119.37
Oct.	3,	"	To court clerk for costs	"	#35	10.00
"	13,	"	To J. M. Scott for Sept. lease operations.....	"	#36	115.58
"	29,	"	To Capitol Hill Monument Co. for stone to grave	"	#37	306.00
"	29,	"	To Dr. W. J. Neal for medical services	"	#38	200.00
Nov.	15,	"	To J. M. Scott for Oct. lease operations	"	#39	80.85
Dec.	11,	"	To Glenn O. Young as advancement on attorney's fees	"	#40	250.00
"	22,	"	To J. M. Scott for Nov. lease operations	"	#41	69.60

EXHIBIT "D"—Continued

Mo.	Da.	Yr.	Items Paid Out			Amount
Jan.	11,	1937.	To Citizens Bank of Drumright in payment ½ of Ed Young note, signed by L. D. Kelleam as surety	"	#42	250.00
"	15,	"	To Willis C. Strange, Treasurer, for paving tax and 1936 ad valorem tax on Lot 18, Blk. 5, Drumright	"	#43	62.36
"	24,	"	To J. M. Scott for Dec. lease operations	"	#44	76.28
Mar.	13,	"	To Collector Int. Rev., Okla. City (Income Tax)			13.35
"	19,	"	To J. M. Scott for Jan. operating expenses			60.06
[fol.140]						
Mar.	19,	1937	To J. M. Scott for Feb. operating expenses			$ 80.76
"	,	"	To administrator's fee as per statute		840.20	
"	,	"	To attorney's fees (Less $250.00)		840.20	
"	,	"	To inheritance taxes			
"	,	"	To accruing court costs and expenses			
			Total amount received:		$30,208.22	
			" " paid out:		8,140.48	
			Balance due			$22,067.74
			Inheritance tax costs due			

E. A. KELLEAM,
Administrator.

State of Oklahoma, Creek County, ss.

E. A. Kelleam, being duly sworn, on oath says, that he has read the foregoing account and report of his administration, as the administrator of the estate of Legette D. Kelleam, deceased, and knows the contents thereof, and that the same are true and correct according to the best of his information, knowledge, and belief.

E. A. Kelleam.

Subscribed and sworn to before me, this 23rd day of March, 1937. Della Mae Sconiers, Notary Public. (Seal.) My commission expires: Nov. 22, 1940.

Said administrator further reports that the debts and claims against said estate have all been paid, leaving the

above balance to be distributed between the parties lawfully entitled thereto, as follows:

To E. A. Kelleam, brother of deceased: $——.
To Nell Southard, sister of deceased: $——.

Said administrator now moves the Court that he be allowed to make distribution as above set forth, and take receipts therefor, and present the same to this court, and be discharged; all of which is respectfully submitted.

E. A. Kelleam, Administrator.

[fol. 141] Subscribed and sworn to before me, this 23rd day of March, 1937. Della Mae Sconiers, Notary Public. (Seal.) My commission expires: Nov. 22, 1940.

Endorsements: No. 4354 Amended and Supplemental Final Account. In the Matter of the Estate of Legette D. Kelleam, deceased. Leave granted to file this 24th day of March, 1937. George D. Willhite, County Judge. Received and Filed in County Court, Creek County, March 24, 1937. Lee Snider, by Bess Ryan, Deputy.

In the County Court Within and For Creek County, State of Oklahoma

In the Matter of the Estate of Legette D. Kelleam, Deceased. No. 4354

DEMURRER

And now come the defendants, E. A. Kelleam and Nell Southard and each of them severally and not waiving but expressly reserving the question of jurisdiction over this controversy by virtue of failure to issue and serve process as required by law, demurs generally and specially to the amended petition presented and filed herein and for grounds of demurrer respectfully states:

First, that this court has no jurisdiction over the person of these defendants.

Second, that this court has no jurisdiction over the subject matter of this action.

Third, that there is an absence of indispensible parties to this proceeding apparent upon the face of the record.

Fourth, that there is a misjoinder of parties apparent upon the face of the record.

Fifth, that the persons bringing or attempting to bring this pretended action are without legal capacity to sue, and this pretended action was not instituted by a duly authorized representative as required by law.

Sixth, that this suit is not instituted in the name of the real parties in interest.

Seventh, that said amended petition shows upon its face that any pretended cause of action is barred by limitations, [fol. 142] laches and delay, and that this proceeding was not timely instituted in the manner and form required by law.

Eighth, that said amended petition shows upon its face that the remedy of petitioners sought to be invoked herein is by appeal conformable to the appropriate sections of the code governing probate procedure, and that this court is without jurisdiction to grant the relief prayed.

Ninth, that said amended petition is so vague and indefinite, uncertain and contradictory in its terms as to be incomprehensible and is not prepared conformable to the provisions of the statutes of the State of Oklahoma, pleads conclusions of law and omits allegations necessary to constitute a cause of action in favor of petitioners and against these respondents.

Tenth, that said amended petition discloses on its face that it attempts to raise questions concerning the legality of sales of real estate from E. A. Kelleam and Nell Southard to unnamed persons not parties to this proceeding, and to determine title to said real estate over which controversy this court has no jurisdiction; and in this connection respondents aver there is another and different action pending in the District Court of Creek County, State of Oklahoma, to-wit, the case of Ethel Riddler et al., Plaintiffs, vs. E. A. Kelleam, et al., Defendants, No. 22,999 wherein petitioners seek to litigate the identical matters set forth herein; that having so invoked the jurisdiction of the District Court, petitioners are precluded from re-litigating the same matters in this action.

Eleventh, that said amended petition together with all intendments to be drawn therefrom fails to state facts sufficient to constitute cause of action in favor or petitioners or either of them and against these defendants or either of them.

Glenn O. Young, A. L. O'Bannon, Attorneys for Respondents.

Received and Filed In County Court, Creek County, August 25, 1938. Lee Snider, Court Clerk. By Bess Ryan, Deputy.

[Appellants' statement of points relied on, filed in the district court, is identical with the statement appearing at page 1, and therefore is not reprinted here.]

[fol. 143] IN UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD ON APPEAL—Filed December 28, 1939

To the Honorable H. P. Warfield, Clerk, U. S. District Court for the Northern District of Oklahoma:

Conformable to Rule 75 of the rules governing civil procedure, adopted by the Supreme Court of the United States appellants E. A. Kelleam, J. R. Southard, Jr., Nell Southard, and Joe E. Kelleam designate the summary of portions of the record, proceedings and evidence hereto attached and made part hereof as Exhibit A to be contained in the record on appeal.

In addition to the matter included in Exhibit A, appellants further designate the following portion of the record for inclusion in the Transcript on Appeal, that is to say:

1. Bill of Complaint, filed June 8, 1938.

2. Separate Answer and Cross-Petition of Mrs. Ethel Riddler, et al., filed June 18, 1938, with exhibits.

3. Motion of Plaintiff for Order of Service on Defendant E. A. Kelleam and Joe E. Kelleam Outside of District and Order for Service Outside of District, and return of service thereon, filed Aug. 27, 1938.

4. Special Appearance and plea to the Jurisdiction of E. A. Kelleam, and Special Appearance and Motion to Dismiss of Joe E. Kelleam, J. R. Southard, Jr., and Nell Southard, filed Sept. 3, 1938.

5. Amendment to Bill of Complaint, filed Oct. 24, 1938.

6. Journal Entry overruling Special Appearance and Motion to Dismiss of Joe E. Kelleam, J. R. Southard, Jr. and Nell Southard, and Special Appearance and Plea to the Jurisdiction of E. A. Kelleam, filed Jan. 23, 1939.

7. Motion of E. A. Kelleam, Nell Southard, J. R. Southard, Jr. and Joe Kelleam to strike Cross-Petition, filed Jan. 25, 1939.

8. Separate Answer of defendant E. A. Kelleam to Bill of Complaint and Amendment thereto, filed Jan. 25, 1939.

9. Inventory of Receiver, filed May 4, 1939.

10. Separate Answer of defendants E. A. Kelleam, Mrs. Nell Southard, J. R. Southard, Jr. and Joe E. Kelleam to Cross-Petition, filed June 7, 1939.

[fol. 144] 11. Journal Entry Overruling Motion to Strike Cross-Petition, filed June 12, 1939.

12. Defendants' Request for Special Findings of Fact and Conclusions of Law, filed June 21, 1939.

13. Findings of Fact and Conclusions of Law, filed Sept. 26, 1939.

14. Decree, filed Sept. 26, 1939.

15. Notice of Appeal, filed Nov. 25, 1939.

16. Appeal Bond, filed Nov. 25, 1939.

17. Order Extending Time to Docket Appeal, filed Dec. 27, 1939.

There is also tendered for the use of opposing counsel two copies of the reporter's transcript of the evidence and proceedings of the trial, included in this designation, with true and correct copies of this designation for use of opposing counsel, and your office.

Glenn O. Young, Attorney for Appellants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AMENDMENT TO DESIGNATION OF RECORD—Filed January 15, 1940

Appellants for amendment to their Designation of Record on Appeal add thereto:

1. Statement of Points for Consideration on Appeal, filed December 28, 1939.

Glenn O. Young, Attorney for Appellants.

I hereby certify that a true and correct copy of the foregoing amendment was served upon defendants by mailing to their attorneys of record, Green & Farmer, Tulsa, Okla., and Heber Finch, Sapulpa, Okla., a true copy thereof, this the 13th day of Jan., 1940.

Glenn O. Young, Attorney for Appellants.

[File endorsement omitted.]

[fol. 145] IN UNITED STATES DISTRICT COURT

DESIGNATION OF PLAINTIFF, MARYLAND CASUALTY COMPANY OF BALTIMORE, MD., OF ADDITIONAL PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE INCLUDED—Filed January 5, 1940

Pursuant to Rule 75, of the rules of Civil Procedure, comes now the plaintiff, Maryland Casualty Company, and designates additional portions of the record, proceedings and evidence, to-wit:

1. Order allowing plaintiff to file amendment to Bill of Complaint.

2. Praecipe for chancery subpoena, filed 6-22-1938.

3. Separate Answer of defendant Joe E. Kelleam, filed January 25, 1939.

4. Separate Answer of J. R. Southard, Jr., filed 1-25-39.

5. Praecipe for chancery subpoena filed 6-8-1938.

6. Separate Answer of Nell Southard filed 1-25-1939.

7. Chancery subpoena served on J. R. Southard, Jr. and Nell Southard.

8. Chancery subpoena served on Mrs. Frances Kelleam.

9. Amendment to Answer and Plea in Abatement, filed Jan. 21st, 1939.

10. Order appointing Receiver.

11. Oath of Receiver.

12. Bond of Receiver.

13. Transcript of oral evidence.

14. All exhibits offered in evidence and mentioned in transcript, omitting duplication of exhibits in defendant's designation of record and omitting duplication of exhibits in the pleadings.

15. Plaintiff's fifth exhibit offered in evidence, being the final account of the Administrator in the estate of Legette D. Kelleam.

(This exhibit appears as an exhibit to defendants and cross-petitioner's Separate Answer and Cross-petition, but is incomplete.)

[fol. 146] Dated this the 5th day of January, 1940.

W. E. Green, J. C. Farmer, Robert J. Woolsey, Attorneys for Maryland Casualty Company, 714 National Bank of Tulsa Bldg., Tulsa, Okla.

Service on defendants by mailing copies to Glen O. Young, attorney for Appellants—Sapulpa, Okla.

Service on defendants and crosspetitioners by mailing copy to Heber Finch, attorney, Sapulpa, Okla., R. A. Young, Jr., attorney, Little Rock, Ark., Pliny S. Fry, attorney, Little Rock, Ark.

J. C. Farmer, one of the attorneys for Maryland Casualty Company, a corp.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

AMENDMENT TO PLAINTIFF'S DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE INCLUDED—Filed January 18, 1940

Comes now the plaintiff, Maryland Casualty Company and amends its designation of additional portions of the

record, proceedings and evidence to be included in the record, to-wit; In lieu of designations 14 and 15 in the original designation hereto filed, the following;

14. Final account of Administrator in probate case #4354 Creek County, Oklahoma.

15. Petition for approval of final account in above case #4354.

16. Amended and supplemental final account in above case #4354.

17. Petition to reopen case, filed in above case #4354.

18. Amended petition filed in said case #4354.

19. Demurrer filed in said case #4354.

20. Journal Entry of Judgment in said case #4354.

[fols. 147-148] 21. Cross-petitioner's exhibit 2, two warranty deeds.

22. Plaintiff's exhibit #1—Stipulation of settlement.

23. Plaintiff's exhibit #2—Letter of Speakman & Speakman to E. A. Kelleam.

(Note: In the original designation all exhibits are requested and this amendment to the original designation omits exhibits that would merely encumber the record.)

Dated this 18th day of January, 1940.

W. E. Green, J. C. Farmer, Robert J. Woolsey, Atty. for Pltf., 714 Natl. Bk. of Tulsa Bldg., Tulsa, Okla.

Service on defendants by mailing copies to; Glen O. Young, attorney for appellants—Sapulpa, Okla., Heber Finch, attorney for defendants & crosspetitioners, Sapulpa, R. A. Young, Jr., Fort Smith, attorney for defendants & crosspetitioners, Pliny S. Fry, Wewoka, Okla., attorney for defendants & crosspetitioners.

Green & Farmer, By W. E. Green, 714 Natl. Bk. of Tulsa Bldg., Tulsa, Okla., Atty. for Pltf.

[File endorsement omitted.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 149] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

ORDER OF SUBMISSION—April 22, 1940

This cause came on to be heard and was argued by counsel, Glenn O. Young, Esquire, appearing for appellants, Robert J. Woolsey, Esquire, and W. E. Green, Esquire, appearing for appellee Maryland Casualty Company, Heber Finch, Esquire, appearing for appellees Ethel Riddler et al.

Thereupon this cause was submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 2059. April Term, 1940

Glenn O. Young (A. L. O'Bannon was with him on the brief) for Appellants.

W. E. Green and Robert J. Woolsey (J. C. Farmer was with them on the brief) for Appellees Maryland Casualty Company; Heber Finch (R. A. Young, Jr., and Pliny Frye were with him on the brief) for Appellees Ethel Riddler, et al.

OPINION—June 17, 1940

Before Phillips, Bratton and Huxman, Circuit Judges

HUXMAN, Circuit Judge, delivered the opinion of the court.

On August 8, 1936, Leggette D. Kelleam died intestate, a resident of Creek County, Oklahoma. He was survived by E. A. Kelleam and Nell Southard, his brother and sister, and by Fannie Bates and Mrs. Klyde Bates, two half sisters, and by a number of children of prior deceased half brothers and half sisters. On August 25, 1936, E. A. Kelleam and Nell Southard petitioned the County Court of Creek County, Oklahoma, for the appointment of E. A. Kelleam as administrator of the estate of Leggette D. Kelleam, deceased, alleging that they were the sole and only surviving heirs. On the same day E. A. Kelleam was appointed adminis- [fol. 150] trator and duly qualified as such by executing a bond in the sum of $12,000, signed by the Maryland Casualty Company as surety. No notice of appointment was published. E. A. Kelleam thereupon took possession of the

estate and administered it. He filed his final account and petition for the determination of heirship and for a decree of distribution, again alleging that he and his sister were the sole and only heirs of the deceased.

Evidently, prior to the hearing of the petition for final account, Fannie Bates, a half sister, heard of the probate proceedings and contacted E. A. Kelleam and Nell Southard concerning the same. A contract was then executed by E. A. Kelleam and Nell Southard with Fannie Bates and the surviving husband and children of Mrs. Klyde Bates, now deceased, whereby Kelleam and Nell Southard agreed to deposit $4,000 in the bank, together with the contract, and agreed that this sum should be paid to them for any interest they claimed in the estate, providing none of the heirs of any of the other half brothers or half sisters of deceased came in and filed a claim, but that if, prior to final distribution, any party claiming to be interested in the estate should appear in the County Court and question the right of E. A. Kelleam and Nell Southard to the entire estate, they would be entitled to withdraw the $4,000 in escrow. The contract also provided that it would not constitute entering an appearance in the County Court of Creek County by Fannie Bates or the heirs of Mrs. Klyde Bates.

After the execution of this contract, E. A. Kelleam filed an amended petition for approval of his final account, and for a decree determining heirship and distribution of the estate. He now listed the one living half sister and the children of the deceased half brothers and half sisters, and for the first time claimed for himself and Nell Southard the entire estate as an ancestral estate. The amended petition for approval of the final account, determination of heirship and distribution of the estate, was set for hearing without notice being given to the half sister or any of the children of deceased half brothers or half sisters, other than by publication.

Thereafter, on the day appointed for the hearing, the County Court entered its judgment, order and decree, finding and determining that the estate of Leggette D. Kelleam, deceased, was an ancestral estate, and ordered distribution thereof to E. A. Kelleam and Nell Southard.

[fol. 151] On September 21, 1937, a petition to reopen the proceedings was filed and an amended petition was filed on December 28, 1937, by the children of the prior deceased half brothers and half sisters of Leggette D. Kelleam, de-

ceased, setting forth their relationship to deceased and stating that they had no notice of the proceedings; that the distribution of the estate was fraudulently and collusively obtained, and asking that the decree of the County Court be set aside. E. A. Kelleam and Nell Southard demurred to this petition, and on September 15, 1937, the *Court* Court sustained the demurrer. The petitioners then appealed to the District Court of Creek County, where their appeal is now pending.

After the decree of the County Court sustaining the demurrer to the petition to reopen the case was entered, E. A. Kelleam made a conveyance of some of the real estate which he had obtained from the estate to his son, Joe Kelleam, and Nell Southard made a like conveyance of the real estate which she had obtained from the estate to her son, J. R. Southard, Jr. The conveyances were made without consideration.

On June 8, 1938, The Maryland Casualty Company filed its bill of complaint in the United States District Court for the Northern District of Oklahoma, making the full blood heirs, as well as the half blood kinsmen of deceased, Leggette D. Kelleam, defendants, seeking exoneration on its bond, and asking that a receiver be appointed to preserve the decedent's property pending the outcome of the dispute between the heirs, and that the property be impressed with an equitable lien to satisfy and discharge any final judgment that might be obtained between the litigating parties. By cross petition the defendants who had been excluded from heirship by the decree of the County Court filed their answer and counter claim asserting their claim to an interest in the estate and joined in the application for the appointment of a receiver. June 27, 1938, J. M. Scott was appointed receiver of the property of the estate. E. A. Kelleam, Joe E. Kelleam, Nell Southard and J. R. Southard, Jr., all filed special pleas to the venue and the jurisdiction of the court, and upon such pleas being overruled, they moved to strike the cross petition for want of jurisdiction of the subject matter. The motion to strike was overruled and they thereupon filed their answer and plea in abatement and answer to the cross petition. Issues were joined, the cause was tried to the court, and findings of fact and conclusions of law were made by the court.

[fol. 152] The court found that the estate of Leggette D. Kelleam was not an ancestral estate; that the decree of the

court was obtained by fraud and was therefore void; that the half sister and the children of prior deceased half brothers and half sisters were heirs and entitled to share in the estate; that E. A. Kelleam and his surety were liable to the defrauded heirs; that the surety company was entitled to exoneration and to have the assets impressed with a trust: A decree in conformity with the conclusions of the court was entered, providing for an accounting; that if no accounting be rendered, that then the lien on the property in the hands of the receiver be foreclosed. From this decree an appeal has been taken.

Appellants assert: First, that the District Court was without jurisdiction for the following reasons:

(a) Because a diversity of citizenship was neither alleged nor established.

(b) Because residence in the Northern District was neither alleged nor established.

(c) Because the United States District Court has no jurisdiction in probate to review or set aside decrees of the County Court exercising probate jurisdiction, nor to determine heirship.

(d) Because the United States District Court is without authority to divest an administrator appointed by the County Court in probate of the decedent's estate or to direct such administrator in the discharge of his duties.

(e) Appointment of a receiver without notice, at the instance of a surety upon the bond of an administrator who has been twice exonerated, is beyond the jurisdiction of the United States District Court.

Second, that the evidence of appellees was insufficient to establish fraud or other grounds warranting vacation of the decree of the County Court.

The controversy as to the diversity of citizenship centers around the citizenship of the Kelleams and the Southards. The complaint alleges that E. A. Kelleam and Joe Kelleam are residents of Arizona; that Nell Southard and J. R. Southard, Jr., are residents of Oklahoma; and that all of [fol. 153] the remaining defendants are residents and citizens of Arkansas and Oklahoma.

Jurisdiction of the United States District Court between citizens is based on diversity of citizenship, and an allegation

that a party defendant is a resident of a state is not equivalent to an allegation of citizenship in that state. Such an allegation is insufficient to confer jurisdiction upon the District Court. Realty Holding Co. v. Donaldson, 268 U. S. 398, 45 S. Ct. 521, 69 L. Ed. 1014; Wolfe v. Insurance Co., 148 U. S. 389, 13 S. Ct. 602, 37 L. Ed. 493; Robertson v. Cease, 97 U. S. 646, 24 L. Ed. 1057.

The failure to properly allege diversity of citizenship between plaintiff and defendant will not, however, defeat the jurisdiction of the court if, as a matter of fact, such diversity exists. Halsted v. Buster, 119 U. S. 341, 7 S. Ct. 276, 30 L. Ed. 462; Continental Ins. Co. v. Rhoads, 119 U. S. 237, 7 S. Ct. 193, 30 L. Ed. 380; Howe v. Howe & Owen Ball Bearing Co., 8 Cir., 154 F. 820; Fidler v. Roberts, 7 Cir., 41 F. 2d 305.

Where a defective averment of diversity of citizenship is made in the bill of complaint, the whole record may be looked to for the purpose of curing such defect, and if the requisite citizenship is anywhere averred in the record, or facts are therein stated which in legal intendment constitute such allegations, that is sufficient. And where the court is satisfied, in the light of all the testimony, that the averment of residence is a designated state was intended to mean, and reasonably construed, must be interpreted as meaning that the party was a citizen of that state, it is sufficient. Sun Printing and Publishing Ass'n v. Edward, 194 U. S. 377, 24 S. Ct. 696, 48 L. Ed. 1027.

The record shows that in his petition filed in the County Court, E. A. Kelleam stated under oath that his address was Drumright, Oklahoma, and that Nell Southard was a resident of Blanchard, Oklahoma. Appellants E. A. Kelleam and Joe Kelleam in their answer admit that at the day and date of the institution of this action they were residents of Arizona, and appellants Nell Southard and J. R. Southard, Jr., in their answer admit that at the day and date of the institution of this action they were residents of the State of Oklahoma.

Proof that a person is a resident of a state is prima facie evidence that he is a citizen thereof, and shifts the burden of [fol. 154] showing that his domicile and citizenship is other than the place of his residence to him who alleges it. Mahon v. Somers, et al., cc. Ohio, 112 F. 174; Anderson v. Watt, 138 U. S. 694, 11 S. Ct. 449, 34 L. Ed. 1078; Desmore v. U. S., 93 U. S. 605, 23 L. Ed. 959.

Here appellants do not contend that facts exist which would establish that any of the defendants are citizens of the state of domicile of the surety company, nor do they contend that such is the fact. Their only complaint is that plaintiff in its complaint does not state that E. A. Kelleam, Joe Kelleam, Nell Southard and J. R. Southard, Jr., are citizens of the state in which they admit they reside. In the absence of any showing that they have ever resided in any other state, the finding of the court that diversity of citizenship exists is sustained.

This is an action to impress a trust on real and personal property with a fixed situs in the Northern and Western Districts of Oklahoma. Section 116, 28 U. S. C. A., provides that a local action involving property of a fixed character, lying partly in one district and partly in another, may be brought in the District Court of either district. Section 118, 28 U. S. C. A., provides for service of summons on absent defendants in suits to enforce liens. These are the applicable statutory provisions to an action such as we have here, and not Sections 111 and 112, 28 U. S. C. A., upon which appellants rely.

Appellants urge that the United States District Court has no jurisdiction in probate to pass upon decrees of the County Court exercising probate jurisdiction, nor to determine heirship, and that the United States District Court is without authority to divest an administrator, appointed by the County Court in probate, of the decedent's estate or to direct such administrator in the discharge of his duties. With this statement of principle we find no fault. Appellants rely largely on the case of Wells v. Helms, et al., 10 Cir., 105 F. 2d 402, to sustain their contention. In that case this court, speaking through Judge Phillips, said that an administrator appointed by a state court is an officer of that court and takes possession of decedent's property in obedience to the orders of the court; that his possession is the court's possession and cannot be disturbed by any other court, and that in such an action one claiming an interest in the estate could not seek a judgment against the administrator in his representative capacity.

[fol. 155] However, the court also said in that case that a distributee of an estate who is a citizen of a state other than the one in which distribution is made may establish his right to share in such an estate and enforce such adjudication against the administrator personally, or his sureties, or against any other person liable therefor, or proceed in any

way which does not disturb the actual possession of the property by the state court. See, also, Waterman v. Canal-Louisiana Bank Co., 215 U. S. 33, 44, 30 S. Ct. 10, 54 L. Ed. 80; Commonwealth Trust Co. v. Bradford, 297 U. S. 613, 619, 56 S. Ct. 600, 80 L. Ed. 920; Princess Lida of Thurn and Taxis v. Thompson, 305 U. S. 456, 59 S. Ct. 275, 281, 83 L. Ed. 285.

Here no attempt is made to interfere with the administrator's possession of the estate or with the administration of the estate by the court. The estate has been closed, the property has been distributed to those claiming to be the heirs and entitled thereto; it stands in their names, and this is a proceeding not against the administrator but against those who procured the property. The proceeding is against them in their individual capacities, and is an attempt to deprive them of what it is alleged they procured through a void judgment resulting from the fraud practiced by them in its procurement. In Hewitt v. Hewitt, et al., 9 Cir., 17 F. 2d 716, it was held that a court of the United States in the exercise of its equity powers, where diversity of citizenship gives jurisdiction over the parties, may deprive a party of the benefits of a judgment or decree fraudulently obtained in a state court, since the decree operates on the parties and not on the state court. See, also, Marshall v. Holmes, 141 U. S. 589, 12 S. Ct. 62, 35 L. Ed. 870.

That a surety may maintain an action against its principal to obtain indemnity against its liability on the bond before it has been called upon to pay under the bond is unquestioned. Section 88, Okla. Stat. 1931, 12 Okla. Stat. Ann., Section 1108, provides:

"A surety may maintain an action against his principal, to obtain indemnity against the debt or liability for which he is bound, before it is due, whenever any of the grounds exist, upon which, by the provisions of this code, an order may be made for arrest and bail, or for an attachment."

[fol. 156] See also, Walton, et al. v. Williams, 5 Okla. 642, 49 P. 1022; Morley Const. Co., et al. v. Maryland Casualty Co., 8 Cir., 90 F. 2d 976; Glades County, Fla v. Detroit Fidelity & Surety Co., 5 Cir., 57 F. 2d 449.

It has also been frequently held that in such an action a receiver may be appointed pending the determination of the issues in the action for exoneration. Oklahoma Stat. Ann., Title 12, Section 1551, Sec. 773 Okla. Stat. 1931; Sanford v.

U. S. Fidelity & Guaranty Co., 116 Ga. 689, 43 S. E. 61; Stulz-Sickles Co. v. Fredburn Const. Corp., 114 N. J. Eq. 475, 169 At. 27; Central Surety & Ins. Corp., et al. v. Bagley, (D. C. Colo.) 44 F. 2d 808; Southwestern Surety Ins. Co. v. Wells (D. C. Pa.) 217 F. 294.

But, say appellants, here the surety company has been twice exonerated by the judgment of the court, and therefore there can be no possibility of liability on the bond. However, if the judgment of the county court is void, as it is alleged, then it is a nullity and can afford no protection to the surety on its bond, for a void judgment confers no right upon anyone. Condit v. Condit, 66 Okla. 215, 168 P. 456; Jefferson v. Gallagher, 56 Okla. 405, 150 P. 1071; Loeser v. Bank & Trust Co., 6 Cir., 163 F. 2d 2; 34 C. J., p. 509, § 811.

The whole controversy therefore centers around the question whether the judgment of the Probate Court was procured by fraud and is void.

From the record it appears that when Leggette D. Kelleam died, he was survived by E. A. Kelleam and Nell Southard, his brother and sister, and by two half sisters and a number of children of prior deceased half brothers and half sisters. Within five days of his death, appellants E. A. Kelleam and Nell Southard filed their petition in the County Court asking for the probation of the estate and that E. A. Kelleam be appointed administrator. Knowing of the existence of the heirs of the half blood, nevertheless they alleged that they were the only heirs of the deceased. Nell Southard's address was given as Blanchard, Oklahoma. E. A. Kelleam gave his address in the petition as care of Theral Hotel, Drumright, Oklahoma. Although it appears by inference that at the time of the filing of this petition he was a resident of Sells, Arizona, and notwithstanding that he was a non-resident, he did not call this to the court's attention, nor did he appoint a resident agent as required by Okla- [fol. 157] homa law. Section 1073, Okla. Stat. 1931, 58 Okla. Stat. Ann., Section 162. No notice was published of the pendency of the petition for administration of the estate. In due course of time E. A. Kelleam, as administrator, filed his final account asking that the estate be distributed to him and to his sister, Nell Southard, and that he be discharged as administrator. Here again it is alleged that he and his sister are the only heirs. No mention is made of the heirs of half blood, nor reason assigned why they would not in-

herit. Evidently, before this petition came on for hearing, Mrs. Fannie Bates, a half sister, and the husband and children of Mrs. Klyde Bates, another half sister, who had died since the death of Legette D. Kelleam, gained information of the estate. Now a contract is made by E. A. Kelleam and Nell Southard with these heirs, in which they agree to pay them $4,000, upon condition, however, that none of the other heirs of the half blood appear in the proceedings; that if they did, the $4,000 would not be paid. The money was placed in escrow with the contract to await the happening of the contingency upon which the contract was predicated. Then E. A. Kelleam files an amended petition for approval of final account and for determination of heirship, in which he for the first time lists the sisters of the half blood and the children of the prior deceased brothers and sisters of the half blood, giving their residence. And now for the first time he states that the estate is ancestral and therefore belongs to him and his sister.

An examination of the record reveals that the estate which is now claimed as ancestral could not possibly be such. The claim to the ancestral estate is that Leggette D. Kelleam inherited this property from his mother, Mary A. Kelleam, who died intestate on December 4, 1928. Her estate was duly probated and administered and at the time of her death consisted of five lots in the town of Blanchard, Oklahoma, the title to which, by final decree of the court entered September 2, 1929, became vested in Leggette D. Kelleam, E. A. Kelleam and Nell Southard, in equal shares. None of these lots was listed as assets of the estate of Leggette D. Kelleam, deceased. How flimsy the claim to the property as an ancestral estate is appears when we observe that the ancestor died December 4, 1928; that none of the property which is set forth in the inventory in the estate before us was owned by her during her lifetime. The record reveals that two Drumright, Oklahoma, properties were acquired by Leggette D. [fol. 158] Kelleam, one in 1932 and one in 1935; that the Oklahoma City properties were acquired in 1933; that the interest in the so-called Sam Vance lease was acquired in 1930; that a 1936 Model Ford automobile is claimed as ancestral property; that a number of notes claimed as ancestral property were all dated from one to seven years after the death of the ancestor.

When the appellee-heirs herein filed their petition to reopen the judgment in the County Court, E. A. Kelleam and

Nell Southard promptly proceeded to attempt to place the real estate beyond the possible reach of the other heirs in the event they succeeded in having the judgment set aside. Conveyances were made to their children without consideration. Such conduct is the act of a guilty conscience. When one has defrauded another and fears detection, he often seeks to manipulate the title to property in his hands so that it may not be available in the event judgment is recovered against him. The only conclusion which can be reached from an examination of the transcript is that E. A. Kelleam was a faithless trustee; that he designedly and intentionally proceeded from the beginning to conceal the status of the estate from the court and the heirs; and that he and his sister conspired together to defraud the remaining heirs of that which was their just due. The conclusion of the trial court is the only one that could be reached.

The judgment is Affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

Before Honorable Orie L. Phillips, Honorable Robert L. Williams, Circuit Judges, and Honorable Alfred P. Murrah, District Judge

JUDGMENT—June 17, 1940

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Oklahoma and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed; and that Maryland Casualty Company of Baltimore, Maryland, a corporation, Mrs. Ethel Riddler, Mrs. Dorothy Payne, J. K. Perkins, Mrs. F. Bates, Glen Perkins, Bessie Mathews, [fols. 159-178] Mrs. Elouise Kulp, Leggette Hall, Lamar Hall, Marguerite Bradley Kelleam, Mary Kate Hall, Kelleam Hall, Clifford Kelleam, Kathleen Kelleam, Dr. Fannin Kelleam, Francis Kelleam, Mrs. Jimmie Kelleam and Robert Kelleam, appellees, have and recover of and from E. A. Kelleam, Nell Southard, Joe E. Kelleam and Joe R. Southard, Jr., appellants, their costs herein.

[fol. 179] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—July 17, 1940

This cause came on to be heard on the petition of appellants for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

APPLICATION AND MOTION FOR STAY OF MANDATE—Filed July 25, 1940

Come now the appellants and respectfully pray this Honorable Court to stay the mandate herein and for grounds therefor show to the Court:

A. That the opinion was rendered and filed herein on the 17th day of June, 1940.

B. That within thirty days Petition for Rehearing was filed, which said petition was overruled July 17, 1940.

C. That appellants desire to and intend in good faith to file application in the Supreme Court of the United States for a Writ of Certiorari for review of said decision.

Wherefore, appellants respectfully pray that mandate not issue herein for a period of thirty days and pending the filing in the Supreme Court of the United States of an application for a Writ of Certiorari; that upon filing said application in said court the mandate in this cause be further stayed in accordance with the rules of this court pending determination of said cause by said court.

Glenn O. Young, Attorney for Appellants.

[File endorsement omitted.]

CERTIFICATE OF COUNSEL

Glenn O. Young, counsel for appellants, hereby certifies that the above and foregoing motion to stay mandate in his

opinion is meritorious and well founded in point of law and point of fact and is not filed for the purpose of delay.

[fol. 180] And that copies thereof were served upon opposing counsel this the 23rd day of July, 1940.

Glenn O. Young, Attorney for Appellants.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER GRANTING MOTION FOR STAY OF MANDATE—July 25, 1940

This cause came on to be heard on the motion of appellants for a stay of the mandate herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service under Section 3 of Rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

[fol. 181] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 182] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 183] IN SUPREME COURT OF THE UNITED STATES

STIPULATION RELATIVE TO PRINTING RECORD IN THE SUPREME COURT OF THE UNITED STATES—Filed November 4, 1940

Whereas, it appears necessary to reprint the record herein for the use of the Supreme Court of the United States, and it further appears that the printed record contains matters not essential to a consideration of the questions presented by the petition for the writ,

Now, Therefore, this Agreement witnesseth that counsel for petitioners and counsel for respondents stipulate and agree that the following parts, portions and pages of said printed Transcript of Record may be omitted from the reprinted record prepared under the supervision of the Honorable Charles Elmore Cropley Clerk of this Court, such omitted portions to be appropriately evidenced by reference to this Stipulation;

(1) Verification on page 11 of the transcript of the record from the Circuit Court of Appeals as indicated by copy hereto attached.

(2) The verification shown at the top of page 22 of the transcript of the record from the Circuit Court of Appeals.

(3) All matters beginning on page 30 starting with "Order appointing Appraisers" and including Exhibit "F" on page 32 and ending on page 39, preceding the words Exhibit "G", of the transcript of the record from the Circuit Court of Appeals.

[fol. 184] (4) The verification on page 60 of the transcript of the record from the Circuit Court of Appeals.

(5) It is Stipulated and Agreed that the petition for and brief by the appellants in the Circuit Court of Appeals for rehearing may be omitted, same being pages 161 to and including 178 thereof to and including the words Glenn O. Young, attorney for the Appellants.

All of the above deletions in accordance with this stipulation are shown by a copy of the transcript of the record from the Circuit Court of Appeals bearing penciled crossouts, given to the clerk of this Honorable Court along with this stipulation, so that he may clearly see what is to be omitted hereby.

In Witness Whereof, the undersigned have hereunto subscribed their names.

Warren E. Miller, Glenn O. Young, Attorneys for petioners. John J. Carmody, Green & Farmer, by W. E. Green, Heber Finch, R. A. Young, Jr., Pliney S. Fry, Attorneys for Respondents.

[fol. 185] [File endorsement omitted]

Endorsed on Cover: File No. 44,698. U. S. Circuit Court of Appeals, Tenth Circuit, Term No. 349. E. A. Kelleam, Nell Southard, Joe E. Kelleam and Joe R. Southard, Jr., Petitioners, vs. Maryland Casualty Company of Baltimore, Maryland, Mrs. Ethel Riddler, Mrs. Dorothy Payne, et al. Petition for a writ of certiorari and exhibit thereto. Filed August 20, 1940. Term No. 349 O. T. 1940.